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ABSTRACT

The research on which this report is based was intended to explore ways in which improvements can be made in Title I through modifications in the administrative process. The report reviews the actions of the federal and state governments in using Title I funds to provide special educational services to educationally disadvantaged children in low-income areas and concentrates on the administrative actions of the federal and state governments. It analyzes the actions of the U.S. Office of Education (OE) in establishing the legal framework for the program and in monitoring and enforcing its proper implementation by states and local educational agencies (LEAs). It also analyzes the actions of state governments in administering Title I and in operating compensatory education programs. (Author/MLF)

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Administration of Compensatory Education

A Report From the National Institute of Education

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The National Institute of Education
U.S. Department of Health, Education and Welfare
Washington, D.C. 20208

ADMINISTRATION OF COMPENSATORY EDUCATION

September 19, 1977

The National Institute of Education
U.S. Department of Health, Education and Welfare
Washington, D.C. 20208

PREFACE

The Compensatory Education Study on which this report is based was requested by Congress in the 1974 Elementary and Secondary Education Amendments. The 1974 Amendments emphasize the direct responsibility of the National Institute of Education (NIE) to the Congress. The study began in February of 1975 only after Congress had reviewed an official research plan submitted by NIE; it was funded with $15 million specially set aside from the Title I program appropriation. Results of the study will be reported directly to the President and to the Congress.

This direct responsibility to Congress led NIE to ensure that the study could be planned and integrated within the Institute. A special staff was established to conduct the study, and it was placed in NIE's Educational Equity Group. That staff has planned and closely managed the research on which this report is based and the 35 research projects that make up the whole compensatory education study.

This report reflects the efforts of many members of the NIE staff and contractors. Donald Burnes of NIE managed all of the research projects on which the report is based. Several other members of the Compensatory Education staff, especially Paul Hill, Iris Rotberg, and Alison Wolf, also contributed to the planning and analysis of the studies reported here.

Chapters I and II were written by Donald Burnes from documents supplied by Robert Silverstein of The Lawyer's Committee for Civil Rights Under Law, which conducted NIE's Survey of Legal Standards. Christopher Wheeler of NIE conducted the research on which Chapter III is based and wrote the chapter. Chapter IV was written by Donald Burnes and is based on findings from the Survey of Legal Standards and the Study of State Administration, which was conducted by Booz Allen and Hamilton, Inc., Syracuse Research Corporation, and Policy Research Corporation. Chapter V relies on information gathered at conferences between NIE and the coordinators of state compensatory education programs. It was written by Richard Moss and Paul Hill of

NIE. Special recognition is due to James Harvey and Alison Wolf of NIE for their contributions to the logic and integration of this report and to Van Ring and Janice Gallop for their assistance in typing the report.

The work of several other people outside NIE is reflected in this report. Chairman Owen Peagler of the National Advisory Council on the Education of Disadvantaged Children and the members and staff were generous with their time in advising on the execution of the study, as were a great number of education agencies and associations at the Federal, state, and local levels. The staff of the U.S. Office of Education has been unfailingly open and helpful throughout the study.

Members of the NIE staff too numerous to mention have offered expert advice on research and helped select contractors. Special thanks are due Patricia Graham, Michael Timpane, and Marc Tucker for their suggestions and contributions to this report.

Paul Hill, Director
NIE Compensatory Education Division

Iris Rotberg, Associate Director
NIE Compensatory Education Division

SUMMARY

The purpose of this report is to examine the administration of Title I. It reviews the actions of the Federal and state governments in using Title I funds to provide special educational services to educationally disadvantaged children in low-income areas.

The administration of Title I reflects our Federal system. The Federal government, States, and local educational agencies (LEAs) share responsibility for administration. Although the Federal Government can influence the actions of States and local governments, it cannot fully control them. The primary role of the Federal Government is to establish the rules under which the program operates; it also reviews the actions of States and LEAs to ensure that the rules are observed in practice. State governments are responsible for helping LEAs understand the Title I rules fully, and for overseeing district practices to ensure that funds are used as Congress intended. LEAs are responsible for identifying students in need of compensatory education and for delivering services to them.

This report concentrates on the administrative actions of the Federal and state governments. It analyzes the actions of the U.S. Office of Education (OE) in establishing the legal framework for the program and in monitoring and enforcing its proper implementation by States and LEAs. It also analyzes the actions of state governments in administering Title I and in operating compensatory education programs established by state legislatures.

NIE's analysis of the Federal legal framework for Title I included the Title I statute, official rules established by OE, and formal letters of advice to States and LEAs. It distinguished two kinds of requirements in the legal framework. Funds allocation requirements guarantee that Title I funds are used as Congress intended; program development requirements establish processes to ensure that the services delivered with Title I funds are carefully planned and evaluated.

NIE's research has identified some important strengths and weaknesses of the legal framework. The funds allocation requirements are necessary to guarantee that Title I funds will be used for the special purposes Congress intended. Because LEAs have strong incentives to use their grants for general aid or to defer tax increases, explicit funds allocation requirements are necessary.

The program development requirements are not necessary in the same sense as the ones governing funds allocation, because LEAs have little incentive to deliver poor or ineffective educational services. But these requirements do represent a reasonable effort to establish good planning and review procedures for local Title I programs.

The legal framework is consistent, both with the Title I statute and with itself. States and LEAs need not violate one requirement in order to fulfill another. However, the language of the framework is not clear enough to meet the needs of the state and local officials who implement the program. Understanding the legal framework requires a greater degree of legal scholarship or practical experience than many state and local officials have attained. This lack of clarity has serious consequences, because Title I coordinators who misunderstand the legal framework are likely either to violate its requirements or to adopt unduly restrictive policies.

The inconsistency of OE's day-to-day monitoring and enforcing of the legal framework further confuses States and LEAs about the exact meaning of their obligations under Title I. NIE studied Federal management of the funds allocation requirements that guarantee that Title I programs supplement the regular educational experiences of participating children. The study found that OE does not apply consistent standards in identifying violations of those guarantees. Federal officials in the field interpret the requirements differently, and the findings of Program Review Teams and official audits are often reversed by higher officials in the Office of Education. Due to an internal conflict about the proper Federal role in guaranteeing the supplementary use of Title I funds, the level of OE monitoring and enforcement of these provisions is declining. States and LEAs are not receiving consistent advice, and they are increasingly unsupervised in the use of Title I funds.

State governments also receive unclear guidance about their administrative responsibilities. The legal framework identifies some state functions explicitly, but only implies the existence of others. It is also unclear in setting the standards that States are to meet in performing their administrative functions. As a result, States have adopted widely different administrative policies, and some do not fulfill all of the responsibilities.

States also differ widely in their use of the administrative set-aside funds provided by Title I. Those States which use most of their administrative funds to hire staff are able to conduct frequent monitoring visits to LEAs and to provide advice on compliance and program development issues. States that use only a small part of their administrative funds for staff provide less direct guidance to their LEAs. The size of each State's administrative set-aside limits the absolute number of staff members it can hire, but the emphasis on staffing varies from State to State without respect to total funding. Some States with small set-asides have more staff members per dollar than States which have large amounts of funds for administration.

SEAs in one-third of the States administer their own compensatory education programs, as well as Title I. NIE studied state compensatory education programs, and obtained descriptions of the funding patterns and services that they deliver. State compensatory education programs generally complement Title I, either by extending compensatory services to more students or by providing additional services to children in Title I programs. Most state programs operate smoothly in conjunction with Title I and rely on its administrative framework and staff for support. A few have slightly different funding objectives which are difficult to reconcile with the Title I legal framework. In general, however, state compensatory programs are effective partners with Title I, and their existence does not suggest the need for a change in Title I's objectives or administrative processes.

THE NIE COMPENSATORY EDUCATION STUDY

REQUEST FOR THE STUDY

The Education Amendments of 1974 (Public Law 93-380), the major education legislation of the 93d Congress, extended and changed the Elementary and Secondary Education Act (ESEA) of 1965 and extended other Federal education programs, including the Education of the Handicapped Act and the Adult Education Act, as well as the impact aid, Indian education, and emergency school aid programs.

The law also directed various Federal agencies to conduct studies and surveys so that Congress might have the benefit of more up-to-date and accurate information during its future consideration of legislation to assist elementary and secondary education. Among these directives is Section 821 of the Education Amendments, which instructs the National Institute of Education (NIE) to conduct a study of compensatory education, including compensatory programs financed by States and those funded under authority of ESEA Title I.

Compensatory education includes a number of Federal and state programs in addition to ESEA Title I. The relative size, scope, and long history of Title I mark it as the most important of the compensatory education programs. In order to ensure adequate depth and scope for the study, NIE chose to focus most of its attention on Title I. In 1977, that title, the largest Federal education effort at the elementary and secondary level, provided over $2 billion, most of which was used to fund educational programs for low-achieving students in school districts serving children from low-income families.

Specifically, Section 821 instructs the Institute to conduct a study incorporating:

- An examination of the fundamental purposes and effectiveness of compensatory education programs

- An analysis of the ways of identifying children in greatest need of compensatory education

- An exploration of alternative ways of meeting these children's needs, including the use of written educational plans

- An examination of the feasibility, cost, and consequences of alternative ways of distributing Federal compensatory education funds

- Not more than 20 experimental programs for the purpose of examining the issues above

The relevant sections of the 1974 statute authorizing the study are reproduced in Appendix A.

Section 821 also directs the Presidentially appointed National Advisory Council on the Education of Disadvantaged Children to advise the Institute on the design and execution of the study.

Finally, the law, as amended by Public Law 94-482, requires NIE to submit interim reports to the President and Congress on December 31, 1976, and on September 30, 1977, and to submit a final report in September 1978.

LEGISLATIVE BACKGROUND

The breadth of the examination of compensatory education requested of NIE, ranging from the allocation of funds to specific instructional approaches, reflects a number of concerns which figured prominently during the 1974 Congressional consideration of the extension of ESEA Title I. Among these concerns were:

- The effects of altering the definition of poverty used in the Title I allocation formula

- The feasibility of using measures of student achievement rather than numbers of low-income children in the formula

- The possibility of requiring individualized programs of instruction for each student participating in a Title I program

- The merits of requiring school districts to spend as much as 85% of their Title I grants on basic skills instruction in reading and mathematics

- The relatively narrow focus of most prior efforts to evaluate the effectiveness of Title I

RESEARCH STRATEGY

Like the provisions which authorized the study, therefore, NIE's evaluation adopted a wide focus during its examination of compensatory education. Essentially, the Institute has interpreted the provisions of Section 821 as constituting two major requests from Congress. The first requires an assessment of the effectiveness of compensatory education programs in meeting their fundamental purposes; the second requires an examination of several alternatives which might improve the effectiveness of compensatory education programs.

In response to these requests, NIE developed a strategy designed to produce a complete understanding of how the Title I program operates in practice as well as how it might change if any of several alternatives were adopted. The strategy involved the examination of four major areas:

- Funds allocation

- Service delivery

- Student development

- Program administration

The study defined the first three of these areas as the "fundamental purposes" of Title I. The fourth was examined in order to determine how the administrative

structure required to implement such a large education program promotes the achievement of the program's purposes as well as how program administration might be improved.

FUNDAMENTAL PURPOSES

To examine the fundamental purposes of compensatory education programs, it is necessary to distinguish the broad philosophical concerns that may have motivated the program's originators from the more concrete operational purposes that are built into the program.

The originators of compensatory education efforts, such as Title I, may have had in mind some very general objectives, including helping to eliminate poverty, contributing to the redistribution of wealth and opportunity, reforming education, and symbolizing society's commitment to helping the disadvantaged. Although it is possible to speculate about what their motivations might have been, the debates, statutes, and official legislative reports that established the program contain a specific set of fundamental purposes, which were described in some detail in the Institute's December 1976 publication, Evaluating Compensatory Education: An Interim Report on the NIE Compensatory Education Study. These purposes, clearly discernible in the statute and accompanying formal Congressional statements, are:

(1) To provide financial assistance to school districts in relation to their numbers of low-income children and within those districts to the schools with the greatest numbers of low-income students

(2) To fund special services for low-achieving children in the poorest schools

(3) To contribute to the cognitive, emotional, social, or physical development of participating students

These three goals of Title I are consistent with one another, but each is not equally important to all Members of Congress. Congressional debates, and even the language of different parts of committee and conference reports, suggest that

Members of Congress differ among themselves about the relative importance of the respective purposes. Some Congressional statements imply that the purposes form a hierarchy in which Title I delivers funds and provides services only to increase children's academic achievement (thus making the third the most important). Other statements, however, make it clear that the allocation of funds and delivery of services are important ends in themselves and may, in fact, define the practical limits of Federal action to promote the development of children.

STRATEGY FOR ASSESSING COMPENSATORY EDUCATION

The evaluation of Title I must start from the recognition that the program has several goals, and to focus exclusively on one, improperly ignores the others. Evaluation must also acknowledge that Title I operates through the Federal system and that state and local governments determine what it will be in practice. Although there is only one Federal Title I program, i.e., only one basic framework of laws and policies, it operates differently in every State, in 14,000 school districts, and in countless classrooms. Thus, to understand and evaluate Title I it is necessary to consider the ways in which Federal policy interacts with the actions of States and local educational agencies (LEAs) that actually implement the program.

The early national evaluations of Title I considered only the third goal--contributing to children's development--and often rendered judgments on the efficacy of the program without accounting for the diverse ways in which LEAs had implemented it. Those evaluations overlooked some important truths about Title I: it has several objectives, and under it LEAs deliver a range of services with a variety of aims and emphases to a diverse set of beneficiaries. In contrast to earlier evaluations, therefore, NIE's strategy is designed to (1) provide clear information about what Title I is accomplishing toward achievement of each fundamental purpose and (2) examine the implications of alternative ways of organizing the efforts of the Federal, state, and local governments to achieve these purposes.

THE REPORT

This volume is one of several intended to comply with the statutory requirement that a second interim report be completed not later than September 30, 1977. It

presents the results of NIE's research on the administration of Title I by the Federal Government and the States.

Five additional reports will be published on the following topics:

- The compensatory services delivered by local educational agencies
- The effects of using counts of low-income children in allocating funds
- The feasibility, costs, and consequences of using counts of low-achieving children in allocating Title I funds to school districts
- The effects of using student achievement to allocate funds within school districts
- Student development in compensatory programs

CONTENTS

PREFACE iii

SUMMARY v

THE NIE COMPENSATORY EDUCATION STUDY ix

CHAPTER I. OVERVIEW OF REPORT ON ADMINISTRATION 1

CHAPTER II. FEDERAL RULEMAKING IN TITLE I 5

INTRODUCTION 5
DEVELOPMENT AND DISSEMINATION OF THE FEDERAL FRAMEWORK: THE RULEMAKING FUNCTION 7
Basic LEA Program Requirements in the Formal Legal Framework 8
Necessity of the Framework 12
Consistency and Clarity of the Legal Framework 14
Restrictiveness of the Framework 19
Effects of the Federal Framework on States and Districts 21

CHAPTER III. FEDERAL MANAGEMENT: ENSURING THE SUPPLEMENTARY NATURE OF TITLE I 23

INTRODUCTION 23
OVERVIEW OF FEDERAL GOVERNMENT MONITORING AND ENFORCEMENT ACTIVITIES 25
The Legal Framework 25
Federal Procedures for Insuring the Supplementary Nature of Services 27
INCONSISTENCIES IN FEDERAL MANAGEMENT: CONFLICT WITHIN OE 29
DED's Position 29
Position of the Office of Associate Commissioner 33
The Underlying Factor: Disagreement Over the Federal Role 35
Consequences of the Disagreement 37
Decline in Federal Management Activity 40

CHAPTER IV. STATE ADMINISTRATION 45

THE TITLE I LEGAL FRAMEWORK FOR STATE ADMINISTRATION . . . 46
Rulemaking Authority 47
Enforcement Authority 48
Audit Procedures 49
Implications For Management 50
STATE MANAGEMENT 50

Administrative Activities 51
Administrative Set-Asides 52
Use of the Set-Asides 53
Significance of State Staffing 54

CHAPTER V. STATE COMPENSATORY EDUCATION PROGRAMS 57

INTRODUCTION 57
STATE COMPENSATORY EDUCATION PROGRAMS 59
Funding Levels 60
Funding Mechanisms and District Eligibility Criteria 60
District Program Requirements 64
Services Provided 66
Administration 67
STATE PROGRAMS AS MODELS FOR THE IMPROVEMENT OF TITLE I 69
THE RELATIONSHIP BETWEEN STATE PROGRAMS AND TITLE I 70
Tensions Between State Compensatory Education Programs and Title I 71
Importance of Title I to State Programs 73
The Future of State Programs 74
CONCLUSION 74

APPENDIX A. SECTIONS 821 AND 150 OF PUBLIC LAW 93-380 77

APPENDIX B. RECOMMENDATIONS OF THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW 81

BIBLIOGRAPHY 85

LIST OF TABLES

1. SUPPLANTING ALLEGATIONS REPORTED IN PROGRAM REVIEW LETTERS, BY NUMBER 41

2. ADMINISTRATIVE SET-ASIDE PER STATE AND PER LEA, FISCAL YEAR 1976 53

3. NUMBER OF FTE PER $100,000 SET-ASIDE, FISCAL YEAR 1976 . . . 54

4. NUMBER OF FTE PER $100,000 SET-ASIDE--$150,000 SET-ASIDE VS 1% SET-ASIDE, FISCAL YEAR 1976 56

5. TITLE I AND SCE FUNDING LEVELS, FISCAL YEAR 1976 58

6. CHARACTERISTICS OF FORMULA-BASED SCE PROGRAMS 61

CHAPTER I. OVERVIEW OF REPORT ON ADMINISTRATION

Though Title I provides funding for local educational agencies (LEAs), it is not a simple program of grants to jurisdictions. Title I funds are distributed to LEAs, but their use is limited to special educational services for educationally disadvantaged children residing in low-income areas.

In order to guarantee that Title I funds are used as Congress intends, the program must be managed. Efforts to provide such management have led to considerable investment at Federal, state, and local levels. The administrative effort is smallest at the Federal level, which spends less than $5 million a year and employs 100 people in the U.S. Office of Education (OE). States employ approximately 1,000 persons in their Title I offices, and the 50 States received $20 million in Federal funds in fiscal year 1976 to cover administrative costs. The 14,000 school districts receiving Title I funds spent approximately $120 million on administration in fiscal year 1976, quite apart from their expenditures for services to disadvantaged children.

Much of the success of the Title I program depends on the quality of management at each level of government and on the nature of the interactions among the levels. Administration can play an important part in determining the effectiveness of Title I services. For example, funds are most likely to reach their intended beneficiaries when the procedures for allocation are clear and when funding is based on the most accurate and current poverty and achievement data. When LEAs have advance information about the level of funding they will receive, they are best able to plan and organize their services. Good technical assistance from OE and the States can assist local personnel with planning and developing quality services.

The management structure for Title I reflects the Federal system. Because of this intergovernmental structure, Federal policies are not always dominant. Congress exerts considerable influence on Title I at the Federal level. However, the Federal Government has less control over the way States administer the program. Local school districts are even further removed from direct Congressional influence.

The Federal Government has three mechanisms by which to provide direction to States and local districts. The first is the legal framework that establishes the program and administrative requirements for the operation of Title I. This framework is founded in the language of the Title I statute and in Congressional hearings, floor debates, and reports. The U.S. Office of Education elaborates on this foundation by issuing regulations and guidelines that govern the implementation of the program.

Congress also provides direction through its control of the funding process. Congress can determine the size of the program by establishing overall funding levels for Title I; it can also control the amount of money available for management. Funding for Title I administration is established in the regular appropriations process, and the formula for support of state administration is set in the Title I statute. Thus, through its control of funding, Congress can influence the nature and scale of administrative activities.

The third way in which the Federal Government provides direction is through its monitoring and enforcement activities. The Department of Health, Education, and Welfare (HEW) gives guidance about the meaning and importance of the provisions in the legal framework by the ways in which it gathers information about State and local district Title I practices, and it applies sanctions in cases of noncompliance.

The research conducted by the National Institute of Education (NIE) is intended to explore ways in which improvements can be made in Title I through modifications in the administrative process. It has four objectives:

- To describe the processes by which direction is provided to States and local districts regarding the implementation of Title I
- To assess the clarity and consistency of the direction that is provided
- To identify factors that affect the nature of the direction
- To assess the implications of alternative ways of administering Title I and to determine their likely effect on the direction provided and on the nature of Title I services

Chapters II and III examine Federal administration. Chapter II examines the development and dissemination of Title I's legal framework and the clarity and consistency of the guidance it provides to States and districts. Chapter III analyzes the activities that HEW administrators undertake to monitor and enforce compliance with the legal framework and the impact of these activities in the field.

Chapters IV and V report on state administration. Chapter IV analyzes state efforts to administer the program. It studies the clarity of existing Federal requirements for state administration and examines the processes through which States provide guidance to LEAs. Chapter V examines state-funded compensatory education programs. It provides a description of those programs and analyzes their present and future relationships to Title I.

Like the whole Compensatory Education Study, NIE's research on administration is intended to explain the consequences of alternative Congressional actions. The studies reported here are not strict evaluations of past or present administrators or even of the administrative process as a whole. The research in this report covers the present administration to find ways of improving the program. Throughout, the focus is on understanding how Congress can best use the resources it has in order to achieve the objectives it has set for Title I.

CHAPTER II. FEDERAL RULEMAKING IN TITLE I

INTRODUCTION

Title I is not a simple grant-in-aid program that provides general funding to States and local districts. Title I funds are specifically designated to be used for supplementary services for disadvantaged children in low-income areas.

In order to ensure that States and local districts understand and comply with the purposes of the program, the Federal Government develops and disseminates official policies about the implementation of the program.

HEW uses two principal methods in developing such policies and communicating them to States and local districts. The first method entails issuing general rules about program implementation. The second method consists of monitoring and enforcing compliance with the existing rules.

Under the rulemaking function, OE issues either "legislative" rules or "interpretative" rules. Legislative rules are defined as "rules . . .issued by an agency pursuant to statutory authority which implement the statute."[1] Such rules have the "full force and effect of law." For Title I, these rules include the regulations and mandatory criteria contained in guidelines developed by OE. This report uses the phrase "formal legal framework" to describe the legislative rules and the statutory provisions on which they are based.

OE also issues interpretive rules in implementing Title I. An interpretive rule is defined as a rule or statement issued by an agency to advise the public of the agency's

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[1]Kenneth Davis, Administrative Law Text (St. Paul, Minn.: West Publishing, 1972), p. 126.

practical interpretation of the statutes and rules that it administers. This report uses the phrase "interpretive legal framework" to describe statements contained in such documents as handbooks and correspondence between OE and individual States on matters of interpretation of the regulations.

The second method utilized for disseminating policy is monitoring and enforcement. Under Title I, OE is required to verify that the rules are being followed and levy sanctions against violators. OE sends review teams to States and local districts to assess compliance with the regulations. In addition, the HEW Audit Agency periodically audits the fiscal integrity of the grant transactions and compliance with the rules.

In some cases, monitoring uncovers evidence of possible noncompliance. When this happens, OE assesses the evidence and makes judgments about whether the State or district is, in fact, out of compliance. Once noncompliance has been established, OE can apply fiscal sanctions as an enforcement mechanism.

Various documents which result from monitoring and enforcement also provide information to States and districts about the policies that OE and the Audit Agency are following. These documents include Program Review Letters, audit reports, Letters of Final Determination from audit hearings, responses to complaints, and positions taken before the HEW Audit Hearing Board (an independent office within HEW created to resolve controversies between OE and States and local school districts).

The purpose of this chapter and of Chapter III, which describes Federal administration, is to examine the nature of the direction that HEW provides to States and local districts. This chapter examines the policies that are communicated through the formal and interpretive legal frameworks. Chapter III analyzes the way in which OE and the Audit Agency monitor and enforce regulations.

Two major studies have provided most of the information on Federal management. Data on the Title I legal framework have been provided through the Survey of Legal Standards conducted by the Lawyers' Committee for Civil Rights Under Law. The analysis of monitoring and enforcement is based on the Study of Federal Administration conducted by NIE. Results of the Survey of Legal Standards are presented

immediately below. A report on the Study of Federal Administration is presented in Chapter III.

DEVELOPMENT AND DISSEMINATION OF THE FEDERAL FRAMEWORK: THE RULEMAKING FUNCTION

Central to the study of program administration is an understanding of the way in which OE's formal and interpretive legal frameworks guide the implementation of the program. The rules contained in these frameworks specify the intended beneficiaries, require that program funds are used to provide special educational services, and establish processes which LEAs should follow in delivering services. The rules also define the administrative activities that state education agencies (SEAs) must perform in implementing the program.

To examine the formal and interpretive frameworks, NIE contracted with the Lawyers' Committee for Civil Rights Under Law to conduct the Survey of Legal Standards. The survey included an indepth analysis of the major program requirements for local districts and the administrative responsibilities for States. Both the funds allocation and the program development regulations were examined to see whether they were (1) necessary to accomplish Title I's statutory objectives; (2) consistent with the statute, and also internally consistent; (3) clear and easily comprehensible; and (4) unduly restrictive of districts' flexibility. Separate volumes contain the complete findings of the survey in each area.[2]

Before examining the necessity, clarity, and restrictiveness of the Federal legal framework, it is important to have some understanding of the basic program requirements which guide local district behavior. The following pages describe them briefly.

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[2]Silverstein and Schember, 1977; Silverstein, 1977; Gaffney et al., 1977; Silverstein et al., 1977a, 1977b.

Basic LEA Program Requirements in the Formal Legal Framework

In enacting Title I, Congress made the following declaration of policy:

> In recognition of the special educational needs of children of low-income families and the impact that concentrations of low-income families have on the ability of local educational agencies to support adequate educational programs, the Congress hereby declares it to be the policy of the United States to provide financial assistance to local educational agencies serving areas with concentrations of children from low-income families to expand and improve their educational programs by various means which contribute particularly to meeting the special educational needs of educationally deprived children.

Section 141 of Title I expands upon the general instruction cited in the Declaration of Policy and makes school district eligibility for Title I grants contingent upon assurance that funds will be used for programs: (1) designed to meet the "special educational needs of children in school attendance areas having high concentrations" of low-income children, and (2) of "sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting those needs." In addition, the same section requires assurance that Title I funding supplement rather than supplant non-Federal funding available for Title I students, and "to the extent practical, increase the level of funds that would be made available for the education of pupils participating" if Federal funds were not available.

Title I also requires that services provided with state and local funds be comparable in Title I and non-Title I schools, and that Title I funds be used only for the excess costs associated with Title I programs and projects. These provisions are the basis for the Title I rules issued by the Office of Education.

The formal legal framework contains 14 major program requirements governing either funds allocation or program development. The funds allocation requirements are intended to ensure that Title I funds are used for the intended beneficiaries and that state and local funds are distributed so that Title I dollars actually add to expenditures for the target population. The program development requirements establish the nature of services to be provided at the local level and procedures for guaranteeing their quality.

Funds Allocation Requirements.--Of the eight major requirements governing funds allocation, two, eligibility and targeting, are concerned with the selection of schools and students who would benefit from the use of Title I funds. The remainder are designed to insure that Title I funds are, in fact, used to provide special services for the target population.

Eligibility criteria delineate which school districts are eligible to receive assistance under Title I, define eligible schools as those with attendance areas having high concentrations of children from low-income families, and identify the class of potential recipients as children who are educationally deprived.

The targeting standards determine which of the eligible areas and children will in fact be served.

Of the six remaining funds allocation requirements, the general aid provisions serve as a broad direction to school districts requiring them to serve only "educationally deprived" children with Title I funds and not the student body at large. The regulations that elaborate the other five requirements provide more specific guidance to school districts on the allocation and use of funds. They give practical definition to the supplement not supplant, comparability, and excess cost provisions of the statute. These regulations vary according to whether they apply on the district, school, or student level, and whether they refer to funds or to services.

Maintenance of effort provisions apply to district-level expenditures and require that funding from state and local sources does not decrease. Without such provisions, States or districts could substitute Title I dollars for their own money and maintain the same level of overall educational expenditures. The requirement is designed to ensure that Federal assistance serves a supplemental rather than a basic education function and that Title I grantees not shift ongoing financial responsibility for basic education programs to the Federal Government.

Comparability requirements apply at the school level to the services provided from state and local funds. Generally, they require that the level of these services in every Title I school be comparable, i.e., roughly equal, to the average level in non-Title I schools. They are designed to insure that Federal assistance is not used to

support a level of services that is already available in non-Title I schools in the district. Comparability is generally measured in terms of two ratios: pupil to staff and expenditures per pupil for instructional salaries.

Supplement not supplant requirements apply at the child level and to the use of funds.[3] They are intended to insure that Title I funds are added to, and not used to replace, state and local funds. Children in Title I programs must receive the level of state and local funds they would have received if Title I did not exist.

The supplanting provisions of the statute and the regulations add significantly to the restrictions on local spending behavior contained in the maintenance of effort and comparability requirements. Maintenance of effort refers to district-level expenditures, while the comparability requirements relate to services provided at the school level. The supplanting provision, in contrast, requires that Title I funds be used to provide supplementary programs for individual, educationally disadvantaged children.

The excess cost requirement clarifies the supplanting provisions by stipulating that Title I funds can pay only for the excess costs of Title I programs and projects. If, for example, a district is spending $1,000 per pupil for the regular academic program, and the local Title I program is designed to provide the same program at a more intensive level, Title I may pay only for the costs of the program that are in excess of $1,000 per pupil. The supplement not supplant and excess costs provisions are thus closely related. The supplanting provisions prevent LEAs from penalizing children in Title I programs when allocating state and local funds. The excess cost provision requires that Title I funds pay only the costs of services beyond normal instructional expenditures.

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[3]Prior to 1976, the supplement not supplant requirements applied also at the school level, i.e., to project areas. The portion of the provision that applied at the school level was deleted in the revised legal framework.

Equitably provided provisions, formerly termed "ordinarily provided," extend the comparability regulations from the school to the child level and use a different measure of services. The comparability requirements are met if broad tests, such as the ratio of pupils to staff in each Title I school are roughly equal to the average pupil/staff ratio in all non-Title I schools.

The equitably provided regulations require that Title I children in Title I schools receive their fair share of specific services in comparison to children in non-Title I schools. These regulations are particularly useful when districts are introducing a new, locally provided service to some but not all children. For example, if a district implemented a limited new program to teach English as a second language, the equitably provided rule requires that Title I children be involved in the new program in relation to their proportion of the total number of children in the district.

As a whole, these funds allocation regulations give force to the statement in the Declaration of Policy that Title I funds be used to "expand and improve" programs by meeting the "special" needs of educationally deprived children in low-income areas. In order to accomplish this goal, they impose strict requirements on districts.

Program Development Requirements.--The second group of requirements govern program development and establish the procedures that LEAs must follow in designing and implementing Title I programs. These six major requirements are meant to insure that the services provided are related to the needs of the children to be served, and that they are carefully planned, implemented, and evaluated.

The needs assessment requirement is the first step in the program development process and involves identifying educationally disadvantaged children and specifying their needs. This requirement is intended to insure that all educationally disadvantaged children residing in low-income areas are identified.

The program design regulation requires a formal plan establishing objectives for the Title I program and the specification of activities and services to accomplish the desired ends, based on the results of the needs assessment.

The concentration requirement is intended to insure that Title I funds provide services of sufficient size, scope, and quality to give reasonable promise to success. This requirement takes on added importance since Title I typically is not fully funded.

The coordination requirement is intended to prevent Title I from duplicating benefits provided to the target population by insuring that Title I services are planned in conjunction with other Federal and state agency programs.

The program evaluation requirement provides that the effect of the Title I program be assessed. The results of these assessments should be used by LEAs in the design of future Title I programs and must be reported to the SEA.

The parent involvement requirement prescribes the nature and extent of parental involvement in the development and operation of Title I programs.

In general, the program development requirements incorporate elements of school educational planning by explicitly requiring formal program design, discouraging the expenditure of small amounts of money on each pupil, and requiring local program evaluation.

Necessity of the Framework

In order to assess the necessity of the legal framework NIE's research examined the relationship between the Statute and the rest of the legal framework to verify the statutory basis of the regulatory provisions. The most stringent Federal regulations are those laid down by the funds allocation rules, for example, those concerned with comparability, supplanting, and excess costs. None of them, of course, would be required if the statute were intended to authorize a program of general aid to schools in low-income areas.

However, they are actually based on statutory language requiring specifically that services funded from state and local sources be comparable in Title I and non-Title I schools, and that Title I provide special services for students. Thus, in order to carry out the statute as written, it is necessary to have regulatory language that addresses each of the issues.

The remaining question is whether districts would direct funds and services to the eligible population without the restrictions placed on them by the funds allocation requirements. The interviews conducted during the NIE Study indicate that districts would probably find it difficult to resist the strong pressure to use funds, including those provided through Federal programs, for general or emergency needs. Title I directors report that LEAs need funds for a wide range of purposes, only one of which is serving educationally disadvantaged children.

For example, local pressures exist to provide assistance to more affluent areas, to use Federal funds to mount special programs for purposes other than compensatory education, and to ameliorate the present fiscal crisis facing many jurisdictions. As one state Title I director explained:

> Historically, the educationally deprived in poor areas do not have the political clout to require the provision of equal resources, and certainly not extra services. Title I insures that these children will not be ignored. Most LEAs in my State, if left to their own devices, would not use Federal funds for compensatory education in poor areas; they would be used to counter the current fiscal crisis, whatever that crisis might be.

Meetings involving state and local Title I personnel confirmed that there are strong local pressures to use Title I funds for other than the intended purposes. As one local district Title I director stated:

> Without strong language in the Title I regulations (about the intended beneficiaries and the supplementary nature of the program), there is no question that Title I dollars would be used essentially as general aid. I don't think the superintendent could avoid that.

Other participants uniformly echoed these comments.

An examination of how the funds allocation requirements have developed over time provides confirmation of the view that regulations of this type are necessary to achieve Title I's goals.

The ordinarily provided requirements and comparability provisions were added in 1971 to address specific local fiscal problems identified prior to that time. In 1974,

the excess cost provision was added because of existing local pressures. Thus, as various fiscal pressures confronted LEAs with increasing force, Congress and OE responded by adding new requirements to guarantee the intended use of Title I dollars.

The language of the program development requirements is not "necessary" in the same sense as that of the funds allocation requirements. The program development requirements are based on the assumption that systematic planning and implementation will lead to better quality services; they simply outline a common-sense process for the planning, implementation, and refinement of Title I services.

Although local districts have many pressures to use funds more generally than the funds allocation regulations allow, they have little incentive to deliver inferior or ineffective services. Moreover, even if LEAs follow the procedures established in the program development regulations, there is no guarantee that they will produce high-quality services. No regulations handed down from above can accomplish that. In fact, as the recent Rand Change Agent Study suggested, Federal program regulations have limited effect on the quality of the services that are provided at the local level.[4] However, the program development requirements do represent a plausible effort well within the statutory mandate of the Office of Education to guide local districts in implementing their Title I programs.

Consistency and Clarity of the Legal Framework

It is not enough simply to say that the major requirements contained in the legal framework are reasonably related to the intent of the Title I statute. One must also ask whether the total framework is internally consistent and clearly communicated to States and LEAs. If the framework is inconsistent or not fully disseminated, it cannot be effective in providing the necessary direction to program administrators.

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[4]Paul Berman and Milbrey McLaughlin, Federal Programs Supporting Educational Change, Vol. 4: Findings and Review (Santa Monica: Rand Corp., April 1975).

In assessing the consistency and clarity of the legal framework, NIE's research examined the regulations, guidelines, and interpretive rules to determine whether they are consistent with the intent of Congress as explained in the Title I statute and to discover whether there are contradictions in the regulations and interpretive rules. NIE's research also provided information on whether the meaning of the formal and interpretive legal frameworks is readily apparent or whether States and LEAs must invest inordinate amounts of time and legal scholarship in order to understand what is required of them.

Consistency.--On the basis of the research conducted in the Survey of Legal Standards, NIE has concluded that the legislative and interpretive rules that have been developed by HEW administrators are generally internally consistent. This is particularly true of the formal part of the framework in which no major examples of internal contradictions were found. No obvious cases were found where one regulation contradicted another or where one program guideline appeared in conflict with another or with the regulations.

Much of the interpretive legal framework was also found to be internally consistent. (A few minor inconsistencies were identified in the use of language but state administrators did not appear to have major difficulties in understanding the intent of the rules.) For example, the OE correspondence with States, interpreting various regulations, was found to be generally consistent. In every case, where an individual letter was read in conjunction with other OE letters on related points, an underlying policy emerged that was internally consistent.

Regulations and guidelines provide the same direction, and the interpretive framework is consistent with the formal rules it is intended to clarify.

The NIE analysis of the legal framework has also concluded that the regulations, guidelines, and interpretive framework in effect during the analysis are consistent with a reasonable interpretation of the statute. No case appears where a statement of legal policy in the Federal framework contradicts language of the legislation.

This conclusion does not mean that the legal framework always conforms with the only possible interpretation of the statute. In a number of instances, alternative

interpretations of specific language in the statute might also be consistent with the statute and legislative history. For example, with respect to the funds allocation provisions, OE regulations since 1968 have defined "areas having high concentrations of children from low-income families" as those areas having a percentage or number of children from low-income families as high or higher than the districtwide average. This standard is clear and consistent with a reasonable interpretation of the statute. However, other definitions of "high concentration," such as having a percentage of children from low-income families that is 10% higher than the districtwide average, might also be consistent with the Title I statute.

There are examples of cases where the provisions of the formal legal framework regarding program development requirements are consistent with the statute but where other interpretations might also be consistent. In the area of parent involvement, for example, the statute states that parent advisory councils (PACs) are responsible for "advising (the LEA) in the planning for, and the implementation and evaluation of" local programs. The regulations echo this language and also specify a few specific PAC functions, which include reviewing the Title I application and evaluation and making recommendations on selection of services and educational needs to be addressed. These certainly are consistent with the statute.

However, the regulations could also be more specific about the nature of PAC activities related to the implementation of programs. Participation in monitoring activities, conducted by OE or by the SEA, is another interpretation that might also be consistent with the statute.[5]

Although these examples are cases in which alternative interpretations of the language of the statute might be consistent with the intent of the law, the fact remains that the legal framework that has been developed by OE is not at variance with the statute. The regulations, guidelines, and interpretive legal framework

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[5]In fact, some States have incorporated these interpretations into their own legal framework.

developed by HEW are generally internally consistent, and the legal direction they provide is consistent with a reasonable interpretation of Congressional intent.

Clarity.--Just as important as the consistency of legal direction is its clarity. For purposes of NIE's analysis, a requirement was considered unclear if a Title I administrator, after thoughtful consideration of the language of the provision and its context in the statute or regulations, could not comprehend the full range of acceptable and unacceptable practices under Title I. If the legal framework is not clear, either as formulated or as communicated to the field, States and districts may develop varied interpretations of the legal direction, including some which may be overly restrictive.

The NIE analysis of the framework has concluded that the language of the standards and operational definitions for most LEA program requirements, as set forth in the formal framework and as supplemented by the interpretive framework, is not sufficiently clear because it does not take into consideration the needs of state and local administrators. Interviews at the state level suggested that some Title I directors, who have been active in Title I administration for a number of years and who have had sufficient time to study and interpret the various regulations and elements of the interpretive framework have been able to develop a clear understanding of the legal direction that is being provided. However, for those Title I directors at both the state and local levels who have had insufficient time to study the framework, the language of the formal and interpretive legal structure is likely to be less clear. Consequently, an SEA that has not invested a considerable amount of time in scholarship may not be able to comprehend a regulation or an OE interpretation of a regulation.

These problems with clarity apply to both the funds allocation and program development requirements. The most problematic program development regulations are generally those defining needs assessment, evaluation, and parent involvement. Funds allocation rules impose exacting requirements on districts, but they also create clearer and more rigorous standards for compliance. However, regulations such as those governing supplanting and student targeting provisions also generate considerable confusion.

In an effort to improve the clarity of the legal framework, OE has adopted the practice of providing individual interpretative responses to state and local inquiries about the framework. (In 1968, a compilation of letters of interpretation was issued as Program Guide 24. OE has not compiled a comparable document since then.) On the basis of a review, conducted in the Survey of Legal Standards, of the responses issued since 1968, NIE concluded that it has addressed many of the most difficult and controversial issues in the legal framework.

For example, OE letters concerning supplanting explain the design of pullout programs of various duration, the design of the in-class programs, the issue of giving credit to a student for classes taught by Title I-paid teachers, the classes a child can miss to receive supplemental instruction, the use of Title I funds for sick leave or plant operation and maintenance, and the circumstances under which the LEA may phase in programs formerly funded under Title I. In addition, the OE letters explain such targeting issues as the use of standardized tests, the meaning of the term "greatest needs," and the selection of kindergarten children.

However, OE has failed to disseminate these interpretations as a total set of directions. Individual responses have often been cryptic and have assumed an understanding of the overall framework that most administrators in the field simply do not have. Taken together, the interpretations do provide clear and unambiguous guidance regarding the implementation of the program, but SEAs generally have not been given insight into OE's overall interpretation, since they receive only the individual answers they have sought, and not an overall picture.

The formal legal framework supplemented by the interpretive framework is not sufficiently clear because it fails to address the various needs of its audience. Furthermore, although OE has developed a precisely phrased body of interpretations which if assembled, summarized, and interrelated would resolve the overwhelming majority of difficult questions raised by the States and districts, OE has failed to disseminate these interpretations widely. Thus, the Federal legal directions provided to States and districts about how to implement local Title I services, though consistent internally and with the statute, have not always been sufficiently clear to eliminate substantial ambiguities.

One way of improving the clarity of the Federal framework would be to assemble and interrelate in one place the various interpretive rules that OE has developed into a policy manual (see Appendix B).

Restrictiveness of the Framework

Another characteristic of the legal framework that has an important bearing on the nature of the direction provided to States and districts is its restrictiveness. The Survey of Legal Standards defined a restrictive requirement as one that, though consistent with the Title I statute and legislative history, placed burdens on LEAs that were not necessary to accomplish the stated policy, and thus impeded the potential development of sound and innovative programs.

Title I does, in one sense, place restrictions on the use of funds. It prohibits the use of Title I funds for several purposes which local districts might find amenable, such as general assistance or tax relief, and lays down strict conditions for the distribution of funds and services for Title I recipients. As the earlier section on the necessity of the framework indicated, these restrictions are necessary if Congressional intent is to be realized.

Beyond the important legal boundaries suggested by the statute, OE has generally interpreted the law to allow an adequate degree of flexibility to districts in attempting to meet the program's objectives. The framework does not restrict unnecessarily the design and implementation of sound and innovative programs for educationally disadvantaged children residing in low-income areas.

The flexibility of Title I can best be illustrated with specific examples of the types of policies and programs which the Federal legal framework permits. The following illustrations are derived from a review of the statute and regulations and were generally contained in OE interpretations included in correspondence with SEAs.

- An LEA may design a program under Title I that provides special services to educationally disadvantaged children while they are in their regular classroom (mainstream) or the LEA may decide to provide such special instruction in a separate location. This latter

option is commonly referred to as a pullout program. The LEA choosing the latter model may "pull" the child out of the regular classroom for one period or for the entire day. It can design a program that is coordinated with regular instruction or totally restructure the child's curriculum in one area of instruction or in the entire curriculum.

- An LEA may purchase equipment, materials, and supplies, and even construct buildings with Title I funds under specified conditions, so long as the equipment has been selected and designated for special purposes in connection with a Title I project. Moreover, the Federal requirements do not prohibit the incidental and nonregular use of equipment purchased with Title I funds for non-Title I related purposes.

- An LEA may use its Title I funds in any grade level it chooses. Title I is not restricted to the elementary grades.

- An LEA may focus its Title I funds on the children who are furthest behind grade level at each eligible school (e.g., all children functioning at or below the 25th percentile); it can serve all educationally deprived children (e.g., all children functioning below the 50th percentile) at the schools with the highest incidences of children from low-income families; or it may implement any consistent policy midway between these two extremes.

- An LEA may serve educationally disadvantaged children in all its schools where the variation in the incidence of poverty among the schools in the district is not wide.

- An LEA may use Title I funds to pay for support services such as psychological counseling or medical assistance, as long as the needs assessment shows they are necessary, other sources of funding are not available, they are not ordinarily provided with state and local funds

to children not participating in the Title I program, and only children in the Title I program take advantage of the services on a regular basis.

- An LEA may phase in a new program such as kindergarten without having to first serve all Title I project areas, as long as the program is equitably distributed throughout the system so that project areas are not penalized.

Effects of the Federal Framework on States and Districts

Since States, rather than the Federal Government, have the responsibility for the day-to-day oversight of local Title I programs, they often have to interpret Federal policies for local situations. Based on their understanding of the Federal framework, SEAs are in a position to promulgate their own regulations and guidelines to expand and elaborate the Federal direction. These regulations and guidelines, called state legal frameworks, create additional limits within which districts must implement the program. Thus, the state legal framework can play an important role in determining the nature of the direction that districts receive.

Because of this additional step of developing and disseminating a legal framework to guide local behavior, the clarity of the Federal framework takes on added importance. A failure to comprehend the details of it may be compounded by the interpretations that States incorporate into their own directions to districts. The result may be either inaccurate or illegal state interpretations or state requirements that are overly restrictive.

Although the total Federal framework permits adequate flexibility in the design of educational programs, OE's failure to disseminate the practical guides it has given to some States has resulted in insufficient guidance to SEAs about how to design a variety of programs within the legal framework. Some SEAs have responded by developing their own sound, comprehensive, and flexible models for Title I programs. Other SEAs, however, because of their uncertainty or misconceptions about the meaning of certain requirements and the fear of possible audit violations, have either promulgated overly restrictive policies concerning the kinds of programs Title I may fund or matched OE's lack of guidance with their own silence.

This lack of clarity has not encouraged flexibility in program design; rather, it has discouraged the development of innovative programs. A prime case in point is the issue of pullout vs mainstream programs. Some SEAs will not approve mainstream programs because they perceive pullout programs as the only way to meet the regulations for structuring Title I instruction. Other SEAs insist that all Title I instruction be in regular classrooms because they are afraid that pullout programs are generically in violation of the regulations. In fact, the Federal legal framework permits both types of classroom settings. States also prohibit other program design components, which, based on past experience, have been prone to abuse, such as the provision of art or music instruction, guidance counselors, or nurses. In all these cases, States have generally not understood the Federal regulations sufficiently to be able to assist local districts in designing legal programs incorporating these factors. They have interpreted unclear Federal direction restrictively for fear of approving illegal programs.

In meetings with several groups of district Title I personnel, NIE has heard numerous complaints about overly restrictive regulations that prohibit LEAs from developing sound and innovative programs. On closer examination of the particular regulations, it has become clear that in the vast majority of cases, the districts have complained about interpretations that are not part of the Federal framework; instead, state-promulgated interpretations, based on an incomplete understanding of the Federal framework, have been at fault.

The lack of clarity of the Federal framework has affected state administration in another way. Since state Title I coordinators have had to spend a considerable portion of their time trying to comprehend the Federal legal framework, they have had proportionately less time to spend providing technical assistance to districts for the purpose of improving the quality of programs rather than solely meeting compliance requirements. As a result, according to the NIE Study of State Administration, "although minimal compliance for (the program development) regulations may exist, such compliance does not assure useful activities."[6]

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[6]Robert J. Goettel with the assistance of B. Kaplan and M. Orland, "A Study of the Administration of ESEA, Title I at the Federal, State, and Local Level: A Final Report," Chapter 3, draft, p. 3-3.

CHAPTER III. FEDERAL MANAGEMENT: ENSURING THE SUPPLEMENTARY NATURE OF TITLE I

INTRODUCTION

The preceding chapters described the Title I legal framework and analyzed OE's performance of the rulemaking function. OE and other units in HEW are also responsible for monitoring and enforcing compliance with the rules. Without some effort to verify compliance and to apply sanctions when violations are found, the legal framework would be merely a compilation of advice to the States and districts. The Federal Government's day-to-day monitoring and enforcement of the Title I rules are of critical importance in determining whether the legal framework has its intended effects.

For that reason, NIE initiated a study of Federal management of Title I. The purpose of the study is to assess the clarity and consistency of the Federal Government's efforts to apply the Title I legal framework in the day-to-day operation of the program. The research is being conducted in-house by the staff of the NIE Compensatory Education Division. It relies on extensive interviews with officials responsible for the various aspects of the Federal administration of Title I, and on reviews of official communications between the Federal Government and States and LEAs.

This chapter presents the results of one part of the study. It focuses on the monitoring and enforcement of certain requirements intended to guarantee the supplementary nature of Title I.

The requirements were chosen for analysis for two reasons. First, guaranteeing the supplementary nature of program funds is an essential feature of the Title I program. Title I dollars are intended to be spent over and above those normally provided through state and local sources. Local districts, faced with recurrent fiscal

crises, are often under considerable pressure to use Federal funds to replace state or local monies. Without provisions requiring supplementation, there would be no guarantee that Title I funds would be used in a supplementary way.

Second, past audits of state and local districts' compliance with these provisions have revealed major problems. In the 12 years of the program, HEW's Audit Agency (which audits all HEW programs) has recommended that more than $240 million be returned to OE because of findings of fiscal violations.[1] A recent analysis of audit exceptions in 19 States showed that, in those States alone, almost $40 million in violations of the requirements regarding supplementation had been identified.[2]

NIE's research on State administration has further documented the importance of a study of these requirements. On the basis of case studies in 8 States and 32 local districts, NIE's contractor concluded that there were "major state variations" in this area. In fact, the contractor's final report[3] stated:

> Federal requirements in the areas of supplanting/general aid and student selection appear to be by far the most misunderstood and disputed aspects of Federal administrative policy. Federal officials are consistent and clear in interpreting for states basic aspects of these requirements, but substantially less so in dealing with some of these requirements' more complex ramifications.

In light of these findings, an examination of the Federal management of the requirements guaranteeing supplementation appears essential.

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[1]Elizabeth Demerest, "DHEW Sanction Study." (Washington, D.C.: Department of Health, Education, and Welfare, January 1977).

[2]Hal Winslow and Ann Hershberger, Supplement Not Supplant: A Note on the Definition and Use of a Title I Requirement. (Palo Alto, California: Education Policy Research Center, Stanford Research Institute, May 1977) draft, p.17.

[3]Martin E. Orland with the assistance of Bernard A. Kaplan and Robert J. Goettel, "A Study of the Administration of ESEA, Title I at the Federal, State and Local Level: A Final Report," Chapter 2. (New York: Syracuse Research Corporation, June 1977) draft, p. 2-3, 24.

This chapter contains four sections:

- An overview of the methods used by the Federal Government to monitor and enforce compliance with the supplementary services guarantees
- A review of inconsistencies in Federal management, as manifested in the use of indicators to identify violations and in the application of sanctions for noncompliance
- A discussion of the factors that account for Federal inconsistency
- An analysis of the effects of inconsistent Federal management on the ability of Title I to meet its objective of supplementation

The Federal administration of the requirements guaranteeing the supplementary nature of the program is neither clear nor consistent. Some OE officials administer the same requirements in different ways at different times. Furthermore, officials at various levels in the OE hierarchy administer the relevant requirements differently, and the findings of program review teams and official audits are often reversed. As a result, the level of OE monitoring and enforcement has declined significantly in recent years; States and LEAs now receive little clear guidance and are not effectively supervised in their use of Title I funds. These findings suggest that the provisions of the legal framework guaranteeing the supplementary nature of Title I are losing their effectiveness.

OVERVIEW OF FEDERAL GOVERNMENT MONITORING AND ENFORCEMENT ACTIVITIES

The Legal Framework

The Federal Government communicates its policy regarding the use of funds to States and local districts through the rulemaking process. As the previous chapter

showed, OE has issued a series of regulations or legislative rules to clarify the statutory requirements that Title I funds be used for supplementation. It has also provided, through handbooks and correspondence, numerous rule interpretations to advise the States and local districts of the construction of the statutes and rules it administers.

The formal legal framework in effect during the period under study (1974-1977) included three requirements--supplement not supplant, excess costs, and ordinarily provided--that were designed to ensure that the objective of supplementation was met in practice.[4] The three provisions were expressed as technically separate requirements, but they were meant to complement one another. Because all three requirements contributed to the objective of supplementation, NIE considered all three together in its review of Federal management.

The first requirement specified that the LEA could not decrease the level of funds that would have been provided to program participants if Title I did not exist. It further specified that neither Title I project areas nor program participants could be penalized with respect to the distribution of state and local funds because of Title I's existence.[5]

The second requirement specified that Title I funds could be used only to pay for the excess costs of programs.[6]

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[4]Other requirements ensuring the supplementary nature of Title I include a provision based on Section 143(c)(1) of the statute prohibiting the distribution of state aid in any way that took an LEA's Title I allocation into consideration and then penalized the LEA in the distribution of state aid, the maintenance of effort provision, and the comparability provision.

[5]The revised regulations no longer include an express provision prohibiting LEAs from penalizing project areas. Such penalization is covered by other provisions.

[6]Prior to 1974 the excess costs concept appeared in Program Guide 44, Section 4.1. In 1974 the provision was expressly added to the Title I statute.

The third requirement specified that Title I could not be used to pay for services which were ordinarily provided to children in non-Title I areas with state and local funds.[7]

Federal Procedures for Insuring the Supplementary Nature of Services

The principal methods by which OE and other units in HEW monitor and enforce compliance with the rules are program reviews, audits, and responses to complaints from local officials or citizens.

Program Reviews.--OE's Division for Education of the Disadvantaged (DED) conducts annual monitoring visits to each State and to districts within each State. The visits are designed to insure that SEA administration of Title I complies with the statute and regulations. After approval by the Associate Commissioner for Compensatory Educational Programs, reports and recommendations are sent to the State's chief state school officer. Where changes appear necessary, States are expected to respond by informing OE of the action they plan to take. If the problems identified by the Review Team are serious, and the State refuses to alter its policies or procedures, a hearing process is begun. Title I funds may be withheld if the State is unsuccessful in making its case during the hearing. In the choice of regulations to monitor and the resulting recommendations, therefore, program reviews can influence state and local perception of their responsibilities under the Title I legal framework.

In addition to conducting such formal factfinding, Review Team members, once in the field, are often asked by state and local officials to provide ad hoc technical assistance in the form of advice on how to implement different regulations. These less formal interactions also provide significant indications to SEAs and LEAs of the importance Federal administrators attribute to various Title I rules and regulations.

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[7] This requirement has been deleted by the revised regulations. In its place OE has substituted the "equitably provided" provision which generally provides that services paid for from state and local sources must be equitably provided without regard to the availability of Title I funds.

Audits.--The audit process is another mechanism for monitoring and enforcing compliance. HEW's Audit Agency, which is entirely separate organizationally from OE, conducts audits of state and local administration of Title I. Based on their findings, auditors make recommendations for procedural changes in administrative practices and for repayment of funds spent in violation of Title I regulations.

After the Audit Agency issues its report, it becomes OE's responsibility to determine which findings should be sustained and then to apply appropriate sanctions.[8] Several levels of OE's bureaucracy--DED, the Office of the Associate Commissioner for Compensatory Educational Programs, and the Deputy Commissioner of the Bureau of Elementary and Secondary Education (BESE)--are involved in these decisions. Once a decision is made, a Final Determination Letter is sent from the Deputy Commissioner to the State's chief state school officer. The content and timing of that letter are important to the State, because Title I includes a Statute of Limitations. If no Final Determination Letter is issued within 5 years of the date of the violation, OE loses its legal right to collect the misspent funds.[9]

Response to Complaints.--Finally, various OE offices are required periodically to respond to citizens' complaints about alleged irregularities in the implementation of Title I. These offices are responsible for seeing that the State replies adequately to the complainant or, in the case of a formal legal suit, for providing appropriate testimony on OE's position on the disputed issue. While many complaints are handled at the Division and Bureau levels, the HEW Office of General Counsel often becomes involved in such issues.

As the preceding discussion suggests, the Federal administration of Title I is complicated simply by the large number of offices involved in monitoring and enforcing compliance with the legal framework. The policies of DED, the OE Division directly responsible for administering the program, are reviewed first by the Associate

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[8]Under procedures presently in use no audit report or Final Determination Letter is to be issued until agreement is reached between the Audit Agency and OE. If agreement cannot be reached, procedures exist for arbitration. The procedures described in the text prevailed for most of the audits examined for this report.

[9]Congress adopted the Statute of Limitations provision in 1974.

Commissioner for Compensatory Educational Programs (CEP) and ultimately by the Deputy Commissioner for the organization to which both belong, BESE. States may appeal BESE Audit Final Determination Letters to another level in the OE hierarchy--the Audit Hearing Board, whose decisions can then be appealed to the Commissioner of Education. Furthermore, the Audit Agency, which audits Title I programs, while a part of HEW, is organizationally separate from OE. Considering the many layers of responsibility and authority for monitoring and enforcing Title I, it seems highly probable that inconsistent policies will result.

INCONSISTENCIES IN FEDERAL MANAGEMENT: CONFLICT WITHIN OE

While the sheer number of administrative units involved with compliance enforcement makes the development of consistent compliance standards difficult enough, the difficulties that might routinely be expected are magnified by a basic conflict within OE between DED and the Office of the Associate Commissioner for CEP over the proper role of the Federal Government in implementing educational policy. This conflict has serious implications for the implementation of Title I because it threatens to paralyze Federal efforts to enforce compliance with provisions of the statute and the regulations. This conflict manifests itself in several ways: disagreements over which indicators should be used to monitor compliance with the supplementary intent of the program, disagreements over whether expenditures should be monitored at the school level or at the student level, and disagreements over the kind of evidence sufficient to allege a violation.

DED's Position

DED derives its indicators of violations from the statutory prohibition that provides that an LEA may receive a grant only if:

> . . .Federal funds made available under this title will be used (i) as to supplement, and to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of pupils participating in programs and projects assisted under this title, and (ii) in no case, as to supplant such funds from non-Federal sources. . .[10]

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[10] 20 U.S.C. 241e(a)(3)(B)(1976).

The stipulations that Federal funds supplement the level of funds that would have been provided Title I participants in the absence of Title I funds defines a goal but does not provide an operational mechanism for inducing compliance. DED contends that because one can never know with certainty how a State or local district would have behaved in the absence of Federal aid, some indirect indicators of compliance are necessary.

DED uses five different indicators to determine whether the level of funds has been reduced. Each test relies on services provided to Title I participants as an indication that a reduction in the level of funds has occurred. DED assumes that since the purpose of Title I is to fund supplementary programs for educationally disadvantaged children from poor areas, the logical approach to determine whether supplementation occurred is an examination of the services paid for by Title I. The LEA in turn can rebut any alleged violation by showing that Title I funds in fact were used in a supplementary fashion for Title I participants. DED justifies this presumptive approach on two grounds. First, States have signed assurances that LEAs have designed compliant programs. Thus, if evidence to the contrary is uncovered, it is the responsibility of the States and LEAs to rebut the findings. Second, DED officials maintain that States and LEAs have been made aware since 1968 that the burden of proof rests on their shoulders should OE or the Audit Agency uncover a possible abuse in this area. They cite Program Guide 45A, issued in July 1968. It stated:[11]

> In reviewing Title I proposals, the SEA should be particularly alert to the following indications of violations of basic Title I requirements. The applicant is proposing to use Title I funds to provide in the project area services that are already being provided or that will be provided in the non-project areas with State and local funds. Any applicant that insists on entering a proposal fitting the description of 5 or 6 above must assume the burden of proof that the proposal does not involve the supplanting of State and local funds. . . .(Emphasis added)

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[11] U.S. Department of Health, Education and Welfare. "ESEA Title I Program Guide No. 45A." (Washington, D.C.: Office of Education, July 31, 1969), p. 1-2. More recently (May 1977), the use of presumptions and shifting the burden of proof where one party has superior access to the evidence was sustained by the Supreme Court in a case involving Title VI of the Civil Rights Act (employment discrimination). See International Brotherhood of Teamsters v. United States.

DED uses three indicators of violations at the school level and two at the student level.

School Level Indicators.--At the school level, DED uses the following indicators: the ordinarily provided provision of the regulations, a withdrawal of services test, and a cancellation of previous commitment test.

During the early years of Title I (1965-1970) a common violation of the supplementation requirements was the use of Title I funds to pay for services that were generally provided in non-Title I schools with state and local funds. Had Federal funds not been available, such services would have been provided from state and local funds. To stop this practice, the supplanting section of the regulations was strengthened in 1971 by a provision (116.17(h)) prohibiting the use of Title I funds for services ordinarily provided in non-Title I schools.[12]

A second indicator is a "withdrawal of services" test. DED has cautioned local authorities that withdrawing services previously provided in Title I project schools with state and local funds and then restoring the services with Title I funds constitutes a violation.[13]

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[12]The phrase "generally provided" appeared in the regulations as early as 1968. Also all the Program Guidelines issued by OE between 1968 and 1970 included similar provisions. See Program Guides 44, 45, 45A, and 57.

[13]In a recent DED letter to a State, this test was outlined:

> It is difficult, of course, to determine precisely the level of non-Federal funds that would be provided if Title I funds were not available. There are, however. . .basic indications of decreases in that level; (a) the withdrawal of services that had been provided at Title I schools. . . .The use of Title I funds to restore the services. . .would constitute supplanting.

Quoted from Robert Silverstein and Daniel M. Schember, "An Analysis of the Basis for and Clarity and Restrictiveness of the Program Requirements Applicable to Local School Districts Applying for Grants Under Title I of the Elementary and Secondary Education Act of 1965." (Washington, D.C.: Lawyer's Committee for Civil Rights Under Law, 1976), p. 464. This letter continues that policy formerly contained in OE's officially published Program Guide 45A.

DED's third indicator covers situations in which an LEA has not actually expended state and local funds in the past but has made a commitment to do so. For example, an LEA might commit local funds for the construction of additional classrooms at several Title I schools. If the school board cancels the encumbrance of bond funds and uses Title I funds instead, DED maintains that the LEA has improperly reduced the level of funds that would have been provided but for the existence of Title I.[14]

Within-School Indicators.--DED believes that the statutory provision that Title I funds be used ". . .for the education of pupils participating in programs and projects. . ." requires an effort to monitor the use of funds below the school level, to guarantee that the individual students selected to participate in Title I actually receive supplementary services.

DED is aware of the problems of gathering accurate data on sources of funds specifically provided pupils in a classroom. The staff of DED acknowledge that a direct measurement of the net impact of Federal funds at the pupil level would require schools to keep impossibly detailed financial records on a pupil-based accounting system. But they claim that their indicators can show whether Title I participants received an equitable share of state and local resources, as well as whether the programs funded under Title I are adding anything extra to the education of Title I participants.

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[14]Silverstein and Schember, "An Analysis of the Basis for and Clarity and Restrictiveness of the Program Requirements Applicable to Local School Districts Applying for Grants Under Title I of the Elementary and Secondary Education Act of 1965", p. 464.

DED uses two indicators to determine whether the students who participate in Title I programs also receive services from state and local sources that correspond to the "level of funds" that would have been spent on them in the absence of Title I. The first is used in situations in which the Title I program is offered in conjunction with the child's regular curriculum. In this situation, the LEA must show that Title I funds are being used to "expand and improve,"[15] i.e., supplement, the regular curriculum. For example, the use of Title I funds to pay for a classroom aide to work directly with Title I students, either in the regular classroom or a separate location, can "expand and improve" those children's program if the aide's work is coordinated by the child's regular classroom teacher. Because the regular teacher retains ultimate responsibility for the child's educational program, DED presumes that the LEA has maintained the level of state and local funds which "would have been provided" if Title I did not exist and has used Title I only to supplement the regular program.

The second indicator is applied if Title I funds are used to support a distinct program which replaces part or all of the child's regular program. In this situation, the district must pay its fair share of the costs of the child's educational program, and Title I funds must be used only for "excess costs". If the Title I child's restructured educational program costs more than the LEA normally spends for a child's instruction, "excess costs" exist and can be paid from Title I funds.

Position of the Office of Associate Commissioner

Officials in the Office of Associate Commissioner for CEP are reluctant to apply the indicators used by DED. They are especially critical of DED's use of services as an

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[15] Section 101 of the statute. Also see Silverstein and Schember, "An Analysis of the Basis for and Clarity and Restrictiveness of the Program Requirements Applicable to Local School Districts Applying for Grants Under Title I of the Elementary and Secondary Education Act of 1965," Chapter 9. For a specific statement of the policy on "coordinated with and supplemental to, "see the letter from DED's Director to the Title I Coordinator in Kansas, Richard L. Fairley to Mr. Kenneth Gentry, May 22, 1975 (DED files, Washington, D.C.).

indication of a possible decline in the level of funds. According to their interpretation of the legal framework, the most appropriate test is a comparison of the level of funds at two points in time.[16]

CEP also takes a critical view of DED's presumption that once evidence of possible supplanting is uncovered, the LEA is responsible for refuting the charges. CEP officials argue that the burden of proof is on OE to demonstrate noncompliance.

Illustrative of CEP's position is its rejection of a proposed Final Determination Letter in which DED had upheld, on the basis of the ordinarily provided provision and the withdrawal of services test, an Audit Agency finding of supplanting. CEP wrote:[17]

> The basic rationale for the supplanting exceptions taken by the auditors is that Title I funds "were expended for projects in target area schools while comparable services were funded with state and local funds in nontarget area schools" and because "services previously provided with state and local funds" subsequently were supported with Title I funds. Neither of these reasons constitutes proof, per se, that supplanting occurred. Such proof would require an examination of the aggregate level of funds expended from state and local sources and not simply an examination of such funds used for a single service or partial set of services. . . .Accordingly, I decline to concur with (DED's proposed) final determination that supplanting occurred and that a refund must be made. The. . .(an LEA) and. . .(another LEA) allegations seem to be based on a similar misconceived computational procedure and likewise does (sic) not have my concurrence. (Emphasis added)

CEP's actions suggest that the auditors (and DED) must conclusively prove that a supplanting violation has occurred; the use of services to establish a presumptive indication of a violation is unacceptable.

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[16] John Rodriguez, Memorandum to Chairman, Title I Task Force. (Washington, D.C.: Compensatory Educational Program, October 29, 1976), p. 2 and Tab A, p. 1; John Rodriguez, Memorandum to Deputy Commissioner, BESE: Title I Compliance Standards--DECISION. (Washington, D.C.: Compensatory Educational Program, October 7, 1975), p. 2-3; John Rodriguez, Supplement, Supplant, and Comparability. (Washington, D.C.: Compensatory Educational Program, September 22, 1975), draft, p. 1-2.

[17] Associate Commissioner, Compensatory Education Program, Memorandum to Deputy Commissioner, BESE, Regarding Nonconcurrence with Final Determination Letters on Title I Audits. (Washington, D.C.: Compensatory Educational Program).

CEP officials also believe that within-school indicators will never produce information sufficiently reliable to support a supplanting allegation. At present, it is impossible to determine precisely the funding sources of programs specifically provided pupils in a classroom. An analysis of the net impact of Federal funds at the pupil level, CEP officials argue, would require that schools keep detailed financial records, including daily records of the activities of each student and teacher. Such recordkeeping is highly impractical, they argue, which means that within-school indicators are inherently misleading and, therefore, unreliable.

Furthermore, CEP officials are particularly opposed to within-school indicators because such monitoring and enforcement might reduce the autonomy of local school officials in determining their own programs. As one CEP official put it:

> Logically what (the Division is) saying is that Title I has the authority to tell the School Board to provide a group of kids services that are useful to them. We say that if the curriculum provided by the School Board does not meet the needs of specific kids, the Board should decide to revise its program. Title I doesn't have the authority to do it. Title I doesn't give us the power to require States and locals to make such changes.
>
> What the Division is really saying is that Title I should have precedence over the right of a Principal to determine the kind of curriculum he should have in that school.

Consequently, CEP officials propose a school level test for intraschool supplanting. As one CEP official put it:

> Because of the problems (of per-pupil accounting and political interference) associated with tracking funds below the school level, you have to stop at that level. You cannot go below the school level.

Thus, according to CEP officials, "The ultimate test becomes whether the school saved money. If the school can show that the costs to the school have not decreased, then. . .(there has been no supplanting)."

The Underlying Factor: Disagreement Over the Federal Role

The common thread uniting these differences into a clear pattern is a disagreement between DED and CEP over the proper role of the Federal Government in imple-

menting educational policy. DED officials place priority on guaranteeing the supplementary nature of the program and believe that only an active monitoring and enforcement policy will achieve that goal. CEP officials, on the other hand, believe in a more restrained Federal role, which severely limits the actions they will take to guarantee supplementation.

One CEP official spoke directly of CEP's belief that the Federal Government should restrict itself to the absolute minimum level of action consistent with the statute: "We believe in giving States maximum flexibility under the law. We believe in a strict interpretation of the law. This. . .is a question of proper governance."

On the basis of that belief, CEP opposes DED's efforts to monitor or enforce the supplement not supplant prohibition if those efforts might affect the power of a school board or school principal to determine local curriculum.

Moreover, CEP officials believe that the proper role of the Federal Government is to distribute funds, not to exert precise control over their use. As another CEP official put it:

> We (CEP and DED) have different value orientations regarding the perceived purpose of Title I. DED sees Title I as the Federal Government's major contribution to educational reform. We see it as the Federal Government's major contribution to educational finance or support. . . .Money is to be used to finance better services about which we have little to say.

Given this approach to the Federal role, whenever CEP must choose between a limited or a comprehensive interpretation of a particular provision, the limited view prevails. This greatly restricts the kinds of operational tests CEP will approve for determining whether a supplanting violation has occurred.

DED agrees with CEP that Title I is primarily a funds distribution program and that the Federal Government should not prescribe curriculum. However, DED officials believe that the Federal Government must play an active role in insuring that funds are actually used for supplementary programs for educationally disadvantaged children from poor areas. As one official put it:

> Experience in administering Title I has taught us two lessons: (1) State and local governments historically have neglected the educational needs of such children, and (2) there are strong incentives at work to dilute services to these children and to use the money for more general aid purposes.

This has led DED to enforce provisions more vigorously than CEP.

Consequences of the Disagreement

The conflict between DED and CEP over the Federal role has seriously affected OE's ability to implement the supplementation provisions of the Title I legal framework. Direction to the field has been unclear and inconsistent. Furthermore, there are even signs that overall efforts to monitor and enforce these provisions have declined.

Inconsistent and Unclear Direction in Federal Management.--In some cases, Federal efforts to monitor the supplementation requirements have not helped States and LEAs understand how to implement these provisions.

The resolution of three recent HEW Audit Agency allegations is a case in point. Though the Audit Agency found similar violations in three States, the outcomes were very different in each case. One State has not received a Final Determination Letter on a $1 million audit exception,[18] and the statute of limitations is running out.[19] One State received a Final Determination Letter, but it came so late for certain findings that the statute of limitations prevented OE from collecting the misspent funds.[20] A third State received its Final Determination Letter, and will have to repay the full amount of a $200,000 audit exception.[21]

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[18] The Oklahoma Case, Audit Control Number 50012-06.

[19] Congress adopted the Statute of Limitations provision in 1974. It provides that a State must be notified of a violation within 5 years of its occurrence. OE does this through its Final Determination Letters.

[20] The Kansas Case, Audit Control Number 40002-07.

[21] The Pasadena Case, Audit Control Number 40015-09. The Final Determination Letter was sent prior to the 1974 OE reorganization, which gave CEP expanded responsibility over DED programs.

Due to the disagreements within OE, even those States which are subject to audit exceptions cannot be sure whether they are in violation or what the costs of noncompliance will be.

Similar confusion in the direction provided to States and districts stem from DED program reviews. This study found that not all DED Review Teams are equally vigorous in verifying the supplementary use of funds, and that some make no investigation at all. Moreover, of the teams that do investigate this area, many hesitate to put their findings in writing. Thus, while some States and local districts may find their practices written up (e.g., 1977 California Program Review), others may be informed of possible violations only orally (1977 D.C. Program Review), and still others may never be advised of possible violations (1977 Texas Program Review).[22]

Further confusion results from difficulties Program Review Team members in the field have in interpreting the regulations for SEAs and LEAs. Actions by higher OE authorities have clouded policies that monitors once believed were clear. Recounting difficulties he had experienced, one staff member said:

> Higher officials have told me that we have no policy on supplanting. This makes for inefficiencies in our job when we go out to the field. For example, in (a State) a team a few years ago told the SEA that there were examples of supplanting but there was no further word from Washington. When I went out there, the SEA and the particular LEA asked me to give advice on how to restructure the program to avoid supplanting, but I couldn't tell them because I was not sure how our policy squared with what the higher-ups were thinking.

An example of even more serious confusion arising over the supplanting issue was cited by a regional audit agency official. He said:

> We held a meeting with OE people in. . . .(a State) to discuss some of our findings on supplanting and general aid. Division representatives showed up and they agreed with our findings (on a violation of the ordinarily provided provision). . . .At the same time, a CEP official was over in. . .(a city in a neighboring State) meeting on the same issue. I talked to. . ., who was at the meeting, and found that CEP had completely contradicted what the Division had said. I was flabbergasted.

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[22]Based on participant observation by NIE staff.

Finally, OE responses to citizen complaints and OE positions in legal actions brought by local citizens fail to provide clear and consistent direction to SEAs and LEAs. In two cases examined by NIE, OE was reluctant to respond to citizens complaints or to participate in legal actions which concern the proper use of Title I funds. OE supported the plaintiffs in one court case only after it received strong pressure from a public interest group, and, in the second, in the absence of outside pressure, the complaint languished for nearly a year while OE tried to define its position.[23]

The confusion about the appropriate interpretation of the supplementation provisions might be expected to lead to difficulty in local school districts. Other studies conducted as part of the NIE evaluation confirm the existence of such difficulty.

The Study of State Administration, for example, found the supplanting/general aid prohibitions to be among the most misunderstood features of the administration of the program at the local level.

The lack of clarity about this issue was further highlighted by the following conclusion in the contractor's final report.[24]

> Some States exploit the. . .(inconsistency of Federal direction) by searching for USOE officials who will provide policy interpretations that are consistent with State policy activity. Some State Title I Directors will make a number of phone calls to USOE officials until they receive a favorable interpretation. Other States establish ongoing relationships with particular USOE officials who are usually sympathetic to State concerns while avoiding communication with personnel who tend to be relatively indifferent to such concerns.

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[23]The Richmond Unified School District Case and the Tracy School District Case, OE files.

[24]Martin E. Orland with the assistance of Bernard A. Kaplan and Robert J. Goettel. "A Study of the Administration of ESEA, Title I at the Federal, State and Local Level: A Final Report," Chapter 2. (New York: Syracuse Research Corporation, June 1977), draft, p. 24.

Decline in Federal Management Activity

In addition to the lack of clarity provided by Federal monitoring and enforcement, there are clear indications that overall management activity with respect to supplementation is already declining. CEP has either rejected DED's support of audit findings or approved of proposed Final Determination Letters only under a narrow set of conditions.

One CEP official expressed an extreme view: "I don't even discuss audits with the auditors anymore. I've told them I simply won't sustain audit exceptions about supplanting--ever. If that's in there, forget it."

In fact, CEP has not absolutely refused to implement sanctions but has been reluctant to do so. For example, in 1974 and 1975 CEP rejected DED's support of auditor fundings alleging violations of the supplementation requirements in New York ($27 million); Wisconsin ($3.4 million); Oklahoma ($1.4 million); Tennessee ($250,000); and Kansas ($233,000).[25]

During 1976, CEP did approve some DED proposed Final Determination Letters but only under one of three conditions:

(1) The State admitted it engaged in supplanting activities[26] or pleaded no contest.[27]

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[25]Because only the Deputy Commissioner (the Bureau Chief) has the authority to issue a Final Determination Letter, the Associate Commissioner's refusal to approve DED's proposed Final Determination Letters for these cases represented only a negative recommendation. However, the final results were consistent with letters CEP did approve: two letters were never sent and are still pending (New York and Oklahoma), two were sent upholding the Division's findings but only after the Statute of Limitations had substantially reduced the findings (Wisconsin and Kansas), and one was sent reversing the Division (Tennessee).

[26]Long Beach, California, Audit Control Number 40034-09.

[27]Neglected and Delinquent, California, Audit Control Number 50001-09.

(2) The Statute of Limitations reduced the original financial exceptions to zero[28] or close to zero.[29]

(3) The amounts were a smaller part of a more substantial finding based on another regulation.[30]

Activity in the area of program reviews has also been affected. Beginning in 1975, CEP officials began to challenge, tone down, and even remove DED monitoring findings on supplanting from Review Letters sent to the States. As a result, since fall of 1975, there has been a marked decline in the reporting of supplanting, as Table I shows.

TABLE I

SUPPLANTING ALLEGATIONS REPORTED IN PROGRAM REVIEW LETTERS, BY NUMBER

Fiscal Year	Supplanting Allegations
1971	198
1972	346
1973	80
1974	32
1975	64
1976	9
1977	11

Source: Program Review Letters, DED, Washington, D.C.

[28] Illinois, 50006-05; Kansas, 10014-07.

[29] Arkansas, 20005-06; Haywood, California, 50000-09; Illinois, 50006-05; North Carolina, 20159-04.

[30] Kentucky, 70005-04; New Mexico, 20093-06.

Moreover, in those instances in which findings of nonsupplementation are included in the letters, the tone of the letters differs markedly from that used prior to 1975, when they were sent directly by the Division. Previous letters had stated that "corrective actions with respect to findings A, B, C, etc," were to be undertaken. Now that CEP has centralized control of this process, changes are merely recommended rather than required.

Changes in dealings with one State with a history of problems illustrates this trend. In the Review Letters for fiscal years 1972 and 1973, numerous violations were cited under the heading "Supplanting." The State was told directly that ". . . corrective action must be taken in order for the State to conform to the assurances filed with the Office of Education at the inception of the Title I program."[31] In fiscal years 1975 and 1976, the practices which had been judged in violation of the supplanting regulations still prevailed in this State. But review letters for those years, instead of directing corrective action, merely made recommendations. For example, the letter for fiscal year 1975 stated: "Recommendation: It is recommended that the SEA assist the. . .officials to develop Title I activities which are supplementary to the program funded both with State and local funds. . . ."[32]

Finally, on several occasions during the past year, the delay resulting from disagreements about violations of the supplementation requirements has meant that the Statute of Limitations period has passed, making it impossible to collect misspent funds. At least two Final Determination Letters were held up past the required deadline, and several audit reports were not processed quickly enough to be useful.

Perhaps the most serious consequence of the dispute has been the reduced incentive for DED program reviewers and Audit Agency personnel to monitor the supplementation requirements actively.

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[31] Richard L. Fairley, Program Review Letter to Oklahoma, Fiscal Year 1971. (Washington, D.C.: Division for Education of the Disadvantaged, January 2, 1972), p. 1-2.

[32] John H. Rodriguez, Program Review Letter to Oklahoma, Fiscal Year 1975. (Washington D.C.: Compensatory Educational Program, September 11, 1975), p. 3-4.

DED officials unanimously claim that CEP's actions have seriously eroded morale with respect to enforcement of these provisions. Every time an audit report alleging a violation arrives, officials know they face a protracted, often acrimonious, conflict. DED and audit officials question whether such continued efforts can be sustained, given their costs in terms of time, effort, and aggravation.

For those who must prepare the initial drafts of Final Determination Letters, there are more immediate personal consequences. As one staff person put it:

> I'm not sure when I write a Determination Letter that it represents the correct position of OE. Moreover, I feel that every time I write a letter I am personally sticking my neck out. If there is any question about the letter, it's ultimately up to me to defend our position. The Associate Commissioner for CEP is my boss' boss. This issue has gone all the way to the Bureau level and never been resolved, but the Associate Commissioner feels very strongly about it. And he has challenged us on it.

With respect to program review monitoring efforts, the trend is already clear; DED Review Teams no longer systematically monitor this area. The debate over these requirements is directly related to this development. As one DED official said:

> Program Review Teams now are less likely to investigate areas where supplanting might occur or to write it up should they find it, because they know they can't get it through. The entire controversy has had an inhibiting effect on Program Review Teams in this area.

This opinion was confirmed by the DED staff members who do the program reviews. One said:

> When we're on Program Reviews, we avoid looking at supplanting. The whole situation in (a State) is supplanting but we haven't even surfaced the issue because of the Associate Commissioner. It's been a couple of years since I even wrote up a supplanting finding in a letter.

Observation of three of the five monitoring teams during the spring of 1977 confirmed the existence of widely disparate policies in the field. One staff member explained: "If we knew what a defensible position on supplanting was, then we would go ahead and investigate that area."

The Audit Agency has also been affected by the dispute. One Audit Agency official told regional audit directors:

> The Office of Education is no longer a high priority for audits. We've audited the hell out of them. We continue to have the same findings but there is no action by OE. What is the sense of devoting man year after man year on Title I if OE is not going to do anything about our findings?

Regional auditors express similar views. In one region where no new Title I audits have been scheduled for the past 3 fiscal years, the supplanting controversy was singled out as the primary reason for shifting priorities away from Title I. One regional official said:

> Until we get some more interpretation that we can all agree on before we start an audit, it is a waste of manpower to go out and audit. You put in all that labor and time and then lose the finding because there is no consistent interpretation.

For Title I audits that are still in process in that region, auditors are increasingly inclined to substitute procedural for financial findings just to close the book on Title I. Another official put it this way: "We can't present a united front to the SEA. We think one thing and OE thinks another. If we're not going to be supported, then we'll go to procedural-type findings."

In sum, the long-term effects of this dispute may have serious consequences for the program. While States may now be confused about the signals they receive from OE with respect to the supplementation provisions, there will be no confusion about the message if the present trend continues and HEW ultimately ceases to monitor and enforce the provisions altogether.

CHAPTER IV. STATE ADMINISTRATION

The States exercise important influence over the operation of the Title I program. State rulemaking and management, which include responsibility for the actual approval and oversight of district activities, have an impact on programs over and above that extended by the Federal legal framework and Federal administration.

In performing their responsibilities States are expected to complement Federal management and implement Congressional policy. They are expected to provide managerial direction to districts so that quality services of a supplementary nature are delivered at the local level to the intended beneficiaries.

This situation can place SEAs in an ambiguous position, because their primary responsibility is the implementation of state, not Federal, educational policies. Moreover, SEAs frequently have limited influence over LEAs and must rely on negotiation and persuasion in dealing with them. SEAs cannot manage Title I in isolation from these pressures, and Federal leverage on state Title I administration is therefore limited.

Despite these influences, the Federal Government can exercise some control. Federal administrators can and do exert significant influence through the legal framework and through compliance monitoring and enforcement. Congress also affects state administrative activities through the level of funding provided for state Title I administration, and through restrictions on its use.

NIE's research on state administration of Title I has focused on these two mechanisms. The legal framework was examined to see if it clearly specified state administrative responsibilities, and, if not, to identify the consequences at the state level.

Research on state practices in the administration of Title I examined the uses to which SEAs put their administrative funds, as well as the consequences of different patterns of state administration for the quality of local Title I programs.

THE TITLE I LEGAL FRAMEWORK FOR STATE ADMINISTRATION

The current legal framework provides 11 major administrative responsibilities for States, including grant distribution, application approval, rulemaking and interpretation, monitoring, enforcement, technical assistance, information dissemination, fiscal management, evaluation, reporting to the Federal Government, and complaint resolution.

These responsibilities are generally prescribed by the provisions of the Title I statute itself or by the General Education Provisions Act (GEPA), the legislation that defines the general Federal role in education and the Federal Government's relation to SEAs and LEAs. State responsibilities are further defined by regulation, guideline, or by other written communication with States.

Certain aspects of the Federal formal framework concerning state administrative responsibilities, when supplemented by the informal legal framework, are clear. For example, the authority to approve LEA Title I applications is expressed directly.

However, not all of these responsibilities are clearly defined, either by legislation or regulation; some of them are merely implied in these documents. Duties which are only implied, and not made explicit, cause States to differ widely in their understanding of what their responsibilities for Title I are. Where such implied authority exists, widely varying state policies have resulted.

For example, the lack of clarity in the Federal legal framework causes problems in three areas:

- SEA rulemaking authority is unclear.
- SEA enforcement authority is also ambiguous.

- Audit procedures (and other enforcement techniques) are not clearly specified.

Rulemaking Authority

The regulations expressly authorize SEAs to promulgate rules only in the area of parent involvement. However, they also require LEAs to furnish members of parent advisory councils with copies of certain documents, including "state Title I regulations and guidelines."[1] Because that provision does not limit the state Title I regulations and guidelines to the area of parent involvement, it is taken to imply that SEAs may issue rules in other areas, as long as such rules do not contravene any expressed requirement in the Title I statute or regulations. Federal program guides and written communications with States have also implied that SEAs can develop their own rules for the administration of the program. For example, OE's explanatory booklet, "Title I ESEA: How it Works," indicates that States can establish additional rules consistent with the Federal framework.

From these affirmative references, it is reasonable to conclude that OE expressly permits SEAs to promulgate state Title I rules and guidelines concerning parent involvement and that SEAs have the implied authority to make rules affecting other aspects of Title I, e.g., program design and concentration.

However, the extent of this authority is not clear to all States, and their use of the authority varies widely. All SEAs have issued some general policies and procedures for Title I. Nevertheless, although some SEAs make rules about the design of local Title I services (e.g., LEAs must focus on grades K-3 and include individualized instruction plans), others refrain from doing so because they feel they lack express authority to impose additional criteria or restrictions on local educational policy. In some States, the SEA is willing to try to influence LEAs only if it can point to a specific provision in the Federal regulations authorizing the SEA to expand upon the rules established by the Commissioner of Education.

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[1] 45 CFR Section 116.17(0)(2)(ii)(1975).

Enforcement Authority

The legal framework is also unclear about States' authority to enforce some Title I requirements. Several state powers are clearly and unambiguously defined. For example, state authority to disapprove applications that do not conform to the legal framework is undisputed.

However, other powers are only implied, and the manner in which States implement them is quite inconsistent. The most potentially troublesome is the authority of the State to suspend or withhold funding from an LEA.[2]

The Title I regulations expressly authorize States to withhold LEA funds only in the case of comparability violations at the local level. However, authority to withhold or suspend funds may be implied from a provision in GEPA that indicates that LEAs may request a hearing from their SEAs if they fail to provide the districts any part of their Title I grants.

Some SEAs have interpreted this provision to mean that they have authority to withhold or suspend Title I funds for any violation. A few believe they have authority to withhold funds for violations of state Title I policies. One state Title I director, however, feels he can withhold funds only for a comparability violation. He stated that "I don't know what we could do" if a violation other than comparability were discovered after application approval, and the LEA refused to correct it.

States also vary in the way in which they implement the authority they consider themselves to have. Some States believe that money withheld must ultimately be returned to the LEA, whether or not a hearing determines that the LEA had violated

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[2]Enforcement-related provisions are scattered throughout the Federal legal framework, and there is no separate section in the Title I regulations that contains a list of SEA enforcement options and sanctions and the authority to impose them. In fact, there is no separate section for SEA "enforcement." The regulations refer only to the obligation to enforce.

Title I requirements. Others, however, believe that the LEA loses the funds it would normally have received between the State's decision to withhold funds and the hearing at which the issue was settled.

Audit Procedures

Even when the nature of the state function is clear, the Federal legal framework does not always establish clear standards for its execution. The GEPA regulations require that SEAs audit local Title I programs at least once every 2 years to determine both "fiscal integrity" and compliance with the regulations. However, neither the Title I nor the GEPA regulations contain standards for the conduct of audits.

Early Title I guidelines established some audit standards for Title I, but these are not included in the current Federal regulations. Although the Comptroller General's audit standards are intended for application "to audits of all government organization's programs, activities, and functions--whether they are employed by federal, state, or local government. . .,"[3] there is no reference to such standards in either Title I or GEPA regulations.

In addition, the GEPA regulations require that SEAs have a "systematic method" to assure timely and appropriate resolution of audit findings and recommendations. Yet neither the Title I nor the GEPA regulations contain minimum standards for audit resolution. In the absence of such standards, SEA audit resolution policies vary widely. Some SEAs do not have such policies; others have only informal procedures for resolving audit findings. In the States that have written audit resolution policies, very few have established deadlines for the completion of the process.

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[3] Standards for Audit of Governmental Organizations, Programs, Activities, and Functions, by the Comptroller General of the United States, General Accounting Office (1974 reprint), p. 1.

Implications For Management

It is clear that rulemaking, monitoring, and enforcement are central to the quality of program administration. The failure of the legal framework to provide clear guidance to States about these responsibilities has a significant impact on the ability of States to administer the program. In fact, many state Title I directors urged that clearer and more specific directions on the authority and responsibility of the States be provided. As one director indicated, "If it doesn't say it in the 'regs' expressly, I can't do it." This results in wide variations in the quality and comprehensiveness of the policies that States have developed for Title I.

Of equal significance was the discovery by the Survey of Legal Standards that in some States administrative policies may not be in full compliance with all the legal requirements. Some state application forms request only limited information from LEAs. These States may be approving LEA programs that do not meet every Title I requirement.

A review of SEA audit policies also revealed that several SEAs do not conduct audits of compliance with every regulation, as required by law, but only audits of total expenditures. Thus, the failure to provide explicit direction about state responsibilities can ultimately lead not only to wide variations in policy but also to some potentially noncompliant behavior on the part of States.

STATE MANAGEMENT

In addition to examining the clarity of the policies defining how States should administer Title I, NIE also funded a study of state administration to explore state management activities and the impact of these practices on local school districts.

The Study of State Administration had two major components. The first was a national survey of state administration practices, based on interviews with Title I officials in 46 States. The survey focused on how States perform their responsibilities for administering Title I, and how they use their special administrative funds to support those activities.

The second component was a series of case studies in eight States. Indepth interviews at the state level and in four local districts in the eight States gave information on how state management activity influenced the way in which local districts operated their Title I programs. The eight states were selected to provide variation in geographical location, OE assessment of administration performance, metropolitan/rural character, existence of state-funded compensatory education, and state Title I administration characteristics. Within each State, one large urban, two medium-sized, and one small, rural LEA were identified for study. The case studies also attempted to include districts that had either experienced compliance problems, demonstrated sound management, or experienced major changes in local program administration.

Administrative Activities

Prior examinations of state Title I administration[4] indicated that States vary considerably in how they administer Title I. These studies suggested that although some States actively enforce the entire legal framework, others function essentially as buffers between the Federal Government and the LEAs in order to preserve local district autonomy. Moreover, States varied widely in executing specific administrative responsibilities such as monitoring.

The Study of State Administration corroborated the finding of widely differing state practices. States vary greatly from one to another in the way they disseminate information, provide technical assistance, and enforce compliance.

For example, the vigor of state dissemination and technical assistance activities fluctuated widely. On the average, States sent seven general information mailings to every LEA in fiscal year 1976. However, some States reported no mailings, while others reported as many as 30.

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[4] Joel S. Berke and Michael W. Kirst, Federal Aid to Education: Who Benefits? Who Governs? (Lexington: Lexington Books, D.C. Heath and Co., 1972) and Peter G. Briggs, A Perspective on Change: The Administration of Title I of the Elementary and Secondary Education Act. (Mimeographed, Washington, D.C.: The Planar Corporation, October 1973).

During the same period, some States held no conferences to disseminate information to districts on the regulations, on application procedures, or on model Title I programs. On the other hand, one State reported 500 such conferences during fiscal year 1976. The average number of conferences in a State was 22. Individual visits to school districts in fiscal year 1976 also varied: one State reported having conducted over 1,000 of these visits; another reported none. States averaged approximately 125 individual visits to districts.

These wide variations in patterns of state administrative activity are not surprising in light of two important factors. First, as indicated earlier in this chapter, there is a considerable lack of clarity in the Federal legal framework about precisely what States are supposed to do. Second, there are substantial variations among States in the staff they have available to administer the program and in the size of their workloads.

State Staffing Practices.--The variations in state activities are due in part to differences in the numbers of employees hired to administer Title I. The numbers of professional and nonprofessional staff, in full-time equivalents (FTE), employed to administer Title I ranged from a minimum of 3 to a maximum of 101 in fiscal year 1976. On the average, 18 staff members were involved in Title I administration. The number of professional staff ranged from 2 to 58 (the average was 11), and the nonprofessional staff ranged from 1 to 43 (the average was 7).

Administrative Set-Asides

Although many factors affect SEA staffing practices, the funds available for state administration are clearly an important determinant. The absolute size of the administrative set-aside differs widely among States.[5] Fourteen of the States in NIE's

[5] In the initial formulation of the Title I program, Congress specifically earmarked 1% of a State's program funds for administration. This basic level has not changed since then. In 1968, Congress added a second provision to the funding formula for state administration to aid States with small overall allocations. This addition provided that a State's administrative allocation could not be less than $150,000. This provision affected States with program allocations of less than $15 million. Currently, States are entitled to 1% of their Title I allocation for administration or $150,000, whichever figure is greater.

sample received the $150,000 floor amount; three States, or 7%, received over $1 million in state administrative dollars.

The Federal formula for distributing administrative funds takes only the size of States' Title I grants into account. It does not consider the fact that States have different numbers of school districts. A State with a small Title I grant might have a large number of districts, while a very populous State might have a relatively small number of districts. This is particularly important since the state Title I office must pay each Title I district some attention.

As an indicator of the administrative workload at the state level, the amount of the set-aside per district was calculated for each State. The results are displayed in Table 2.

TABLE 2

ADMINISTRATIVE SET-ASIDE PER STATE AND PER LEA, FISCAL YEAR 1976

	Average	Minimum	Maximum
Title I set-aside per State	$393,000	$150,000	$2,000,000
Set-aside per Title I LEA	$ 2,692	$ 343	$ 13,060

As the table shows, States have an average of almost $2,700 per district for administration purposes. But one State has only $343 per district, and one has over $13,000. Quite clearly, the amount of money available for administration for each district sets limits on the extent of state activity.

Use of the Set-Asides

Differences among States in the resources available for administration are accentuated by the substantial variation in the emphasis placed on hiring staff. In 1973, the most recent year for which complete data on set-aside expenditures were

available, one State spent less than 35% of its set-aside on staff. At the other extreme, one State used 97% of its set-aside to pay staff.[6]

Table 3 displays the different patterns of staff-related expenditures evident in fiscal year 1976.

TABLE 3

NUMBER OF FTE PER $100,000 SET-ASIDE, FISCAL YEAR 1976

	Minimum	Maximum	Average
Professionals' FTE	1.26	4.75	2.79
Nonprofessionals' FTE	.39	5.63	1.89
Overall FTE	1.94	7.37	4.61

Significance of State Staffing

The use of the set-aside to hire staff has an important effect on the way the State interacts with its LEAs. Data from the Study of State Administration suggest a relationship between state staffing practices and the quality of administration at both the state and local levels. On the basis of a "quality" measure derived from four

[6] In fiscal year 1973, States, on the average, spent 78.1% of their administrative dollars on staff (56.0% for professional staff, 22.1% for nonprofessional staff), 13.4% for consultants and contracted services, 0.4% for equipment, and 8.1% for other expenditures. Included in other expenditures are indirect costs; States have negotiated variable indirect cost rates, varying from 0% to as high as 35% of the total set-aside, according to one state Title I director. Some States also carried over administrative funds from the previous year. The use of these funds was not broken down by category.

indicators of compliance,[7] those States identified as having administrations of poor quality had lower staffing levels than would be expected, given the size of their set-asides, the proportion of population that was urban, the number of Title I districts, and their organizational characteristics.

The case studies also indicated that the crucial actions for LEA compliance are those that demand staff. One of these is staff attention to the application process as a vehicle for providing direction to local districts. Field interviews showed that providing careful assistance to districts in completing the application, reviewing it carefully, and using the completed document as a basis for monitoring and technical assistance were all important state administrative activities.

In addition, the greater the efforts a State made to clarify, record, and disseminate both Federal and state regulations, the less likely its districts were to experience compliance problems. The case studies showed that States with adequate staff to explain to districts what they can and cannot do under the regulations are less likely to have district programs out of compliance.

Similarly, the degree of personal interaction between state Title I officials and local district personnel appears to be strongly related to the general quality of local district administration. Case study interviews showed that the more time that state staff spent with local staff, the greater the likelihood that the local programs would be well administered. Application workshops, monitoring visits, or technical assistance visits appeared equally valuable in improving LEA performance.

Together, these findings suggest that staff-intensive activities have a substantial impact on local administration. However, not all States maximize the number of staff

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[7] These indicators were: the dollar amounts of initial audit exceptions, the dollar amounts of sustained audit exceptions, a ratio of the initial exceptions to the final sustained exception, and OE judgments about the quality of state administration. The rankings of States on each of the four indicators were compared, and the 10 States that appeared at the bottom of three of the four indicators were identified as States with poor-quality administration. The eight States that appeared at the top of three of the four indicators were identified as having high-quality administrative practices.

members they have with their Title I set-asides. As Table 4 illustrates, increasing the set-aside does not guarantee that States will increase expenditures on staff, relative to other costs.

TABLE 4

NUMBER OF FTE PER $100,000 SET-ASIDE
$150,000 SET-ASIDE VS 1% SET-ASIDE
FISCAL YEAR 1976

	Professional FTE	Non-Professional FTE	Total FTE
States with $150,000 set-asides	2.7	1.9	4.6
States with 1% set-asides	2.8	1.8	4.6

In general, the size of each State's set-aside limits the absolute numbers of staff members it can hire, but the emphasis on staffing varies from State to State, without respect to total funding. Some States with small set-asides hire more staff members per dollar than States that have large amounts of funds for administration.

CHAPTER V. STATE COMPENSATORY EDUCATION PROGRAMS

INTRODUCTION

Title I is not the only source of funds for compensatory education. Since 1963, when California enacted the first state compensatory education (SCE) program, approximately one-third of the States have initiated efforts to provide services for the disadvantaged. In fiscal year 1976, 16 States allocated more than $364 million for the education of children disadvantaged by virtue of poverty, language, level of academic achievement, or location[1] (see Table 5).

These programs provide substantial additions to the funding available for compensatory education. In 1976 appropriations for these programs represented an increase in the level of support for compensatory education of almost 20% of the national Title I funding.

In 1974, officials from New York, Michigan, and California testified before Congress about their state programs. At that time, information available on state programs was fragmentary, and some members of Congress expressed great interest in the characteristics of state programs, their relationship to Title I, and the extent to which they might provide patterns for modifying the Federal program.

This chapter addresses questions about state compensatory education programs raised by members of Congress during Title I deliberations. It falls into three parts:

- Descriptions of state compensatory education programs currently in operation, including funding, services provided, and administration

[1] For this report NIE has defined state compensatory education programs to include those that provide funds to school districts on the basis of need and require that identifiable services be delivered.

TABLE 5

TITLE I AND SCE FUNDING LEVELS, FISCAL YEAR 1976*
($ in thousands)

	Title I	SCE
California	$154,143	$ 90,400**
Connecticut	19,673	6,473
Georgia	48,060	10,247
Hawaii	5,874	1,800
Maryland	31,660	13,000***
Michigan	85,885	23,600
Nebraska	9,334	600
New Jersey	58,747	--†
New York	200,247	140,300
Ohio	57,553	33,000
Oregon	18,331	1,000††
Rhode Island	7,186	2,000
Texas	125,574	25,400
Utah	6,425	800
Virginia	41,466	9,294†††
Washington	25,972	4,972
Wisconsin	32,003	1,500
Total	$928,133	$364,386

*Florida is about to start a new SCE program this fall.

**Includes only the Educationally Disadvantaged Youth program.

***Program provides money only for city of Baltimore.

†New Jersey program began in 1976-77 school year, i.e., fiscal year 1977; it was funded at a level of $33 million.

††Program provides money only for city of Portland.

†††Pilot program terminated in June 1976.

- Discussion of whether the programs provide possible models for Title I

- Discussion of the extent to which Title I currently affects state incentives to introduce compensatory programs and to operate them efficiently

NIE obtained information on state compensatory education programs from two major sources.[2] First, as part of the Survey of Legal Standards, an extensive analysis of the relationship between the legal frameworks of Title I and of state programs was conducted; this analysis was complemented by descriptive information on several state programs. Second, NIE collected detailed written descriptions of compensatory programs from 14 of the States currently funding them, conducted interviews with the personnel in these States, and held conferences with state and local program coordinators to discuss the operation of state programs and their relationship to Title I.

STATE COMPENSATORY EDUCATION PROGRAMS

NIE collected descriptive information from the conference participants on:

- Funding levels

- Funding mechanisms and district eligibility criteria

- District program requirements

- Services provided

- Administration

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[2] See also State Compensatory Education Programs, DHEW Publication No. OE75-07107 (Washington: GPO, 1975) and Mary Pat Pfiel, State Compensatory Education and Bilingual Programs, Research Memorandum, (Educational Policy Research Center, Stanford Research Institute, 1975).

Funding Levels

States varied considerably in the funding levels of their compensatory programs. Two programs--New York's and California's--accounted for 63% of the $364 million that States spent on their own compensatory education programs in fiscal year 1976. Nebraska's program, funded at $600,000, was the smallest.

In some cases, state dollars substantially increased the funding available for compensatory education. For example, in 1976 New York's Pupils With Special Educational Needs (PSEN) program accounted for approximately 41% of the combined Federal and state funding for compensatory education. California's Educationally Disadvantaged Youth (EDY) program provided 37% of the total Federal and state dollars available for compensatory education in that State, while Wisconsin's program provided about 5% of total compensatory funds.

Funding Mechanisms and District Eligibility Criteria

State compensatory programs provide allocations to districts by either a formula or a competitive grant system. Twelve of the 14 States examined allocate funds on the basis of a formula; 2 award grants on the basis of a competitive application process.

Eight of the 12 formula States distribute funds on the basis of economic disadvantage, either alone or in combination with related measures (see Table 6). Two, New Jersey and Rhode Island, use Title I eligibility counts directly; the other six--California, Connecticut, Nebraska, Ohio, Texas, and Utah--use various measures of low income in their formulas.

Two other States, Michigan and New York, allocate their funds solely on the basis of achievement criteria, and the remaining two formula States use neither income nor achievement. In Georgia, all districts are eligible; in Oregon, on the other hand, a formula based on the density of the district's population is used, and only the State's largest district is eligible for funding under the formula.

TABLE 6

CHARACTERISTICS OF FORMULA-BASED SCE PROGRAMS

	District Eligibility	Attendance Area Eligibility	Child Eligibility
California	Allocation based on index of bilingual, poverty, pupil transiency	School ranked by educational need District sets cutoff Priority to elementary schools	Below Q_2 in reading or handicaps due to language, culture, or environment Concentration on the youngest
Connecticut	Allocations based on 1970 census data and poverty, AFDC	No requirement	Priority to low-income and low-achieving children Priority to preschool and early elementary Minimum of $300/child to be spent
Georgia	All are eligible	No requirement	Grades 1-4 (1975-76) Grades 1-5 (1976-77)
Michigan	Eligible if 15% of K-6 students need improvement Students identified by statewide assessment $200/eligible student	No requirement	Lowest achievers in grades K-6
Nebraska	Districts must apply Allocations based on number of disadvantaged served in special programs in previous year State-aid formula includes weighting factor	No requirement	No requirement

TABLE 6
(Continued)

	District Eligibility	Attendance Area Eligibility	Child Eligibility
New Jersey	1976-77 used Title I 1977-78 used number of students enrolled in remedial reading previous year	Districtwide	Low-achieving
New York	Allocations based on proportion of students performing below 23d percentile in reading and math Each low-performing student generates additional 25% of state aid	No requirement	Students 2 or more years below grade level Priority to grades 1-6 Concentration on reading, math, and bilingual
Ohio	Districts with more than 50 AFDC children Allocation based on children aged 5-17 receiving AFDC	Only Title I schools	Any child in Title I school Priority to children with greatest academic, emotional, and health needs
Oregon	Districts with ADM of 50,000+	Operates in 10 of 27 Title I schools (most disadvantaged)	Socially or culturally deprived
Rhode Island	Allocations based on districts' proportion of state Title I allocation	Schools ranked according to Title I criteria Priority to Title I-operating schools Services to non-Title I schools only after all needs met in Title I schools	Similar to Title I

TABLE 6
(Continued)

	District Eligibility	Attendance Area Eligibility	Child Eligibility
Texas	All districts Allocations based on low income, using Title I criteria $40/child	Similar to Title I	Title I criteria "Add-on" to Title I
Utah	All districts Allocations determined by proportion of 7 categories of disadvantaged	No requirement	Must be in one of 7 categories of disadvantaged children (e.g., low-achieving, bilingual, economically disadvantaged) District option about which categories to serve
Washington	Competitive grant process in which 39 districts were successful in 1975-76	No requirement	5 different categories of children not succeeding in school
Wisconsin	Competitive grants to any school district or nonprofit, non-sectarian agency	As specified in district's grant proposal	Age 3 through secondary school Low achievement Priority to preschool and primary

Source: Information obtained from OE and from state program coordinators.

Washington and Wisconsin rely on competitive applications from districts to distribute funds. Neither State sets any criteria for district eligibility and all districts are eligible to compete for funds.

District Program Requirements

Most state programs do not establish comprehensive requirements for within-district funds allocation and program development similar to the Title I regulations. The most specific requirements generally concern school attendance areas and students eligible for funds, corresponding to the Title I eligibility and targeting regulations. In addition, districts frequently are encouraged to develop programs providing specific types of services.

Funds Allocation Requirements.--The 14 States demonstrate some variability in their approach to funds allocation requirements.

Attendance area eligibility: Seven of the States with formula-based programs do not specify a criterion that districts must use when deciding schools that are eligible for funding. The same is true of Washington and Wisconsin, which have competitive grant applications.

Five of the formula States, however, do specify school eligibility criteria. California uses achievement results to determine school eligibility, and the remaining four States target funds exclusively or primarily to Title I schools (i.e., to schools in low-income areas).

Student eligibility: In most States, student eligibility is determined by achievement criteria. Three States specify that the Title I student eligibility criteria shall be used to determine eligibility for the state program. Similar criteria, such as scoring below the 30th percentile on standardized tests, are specified in six other States.

The remainder of the 14 States varied in their criteria. Oregon and Utah require that children be either poor or low-achieving; in Georgia's program all children in specific grades are eligible.

Both Washington's and Wisconsin's competitive grant programs are directed to low-achieving children. In Wisconsin, 75% of the participating children must be identified by both economic and social factors, while 25% can be identified by either an economic or social factor. Washington's Urban, Rural, and Racially Disadvantaged program has both an academic achievement and a preschool component. In the achievement component, 75% of the children must fall in the lowest ranges of test scores. In contrast, the preschool component is designed so 75% of the children must come from low-income families.

Although some programs might include children who are too high achieving to be eligible for Title I services, only New York's PSEN program makes specific allowance for average or high-achieving students. New York's basic eligibility criterion for students is that they perform 2 or more years below grade level; however, as many as 30% of all children being served in the district's compensatory classes can be students who are not low-achievers.

Although some States specifically intend that funds be used for students in low-income schools, most programs are designed to serve students in any school in the district rather than in specified schools.

Other funds allocation requirements: With respect to guarantees of supplementation, only Nebraska allows districts to use compensatory funds as part of their general revenue. Four other States have no clear policy requiring state compensatory funds to supplement other state and local expenditures. Elsewhere, the program is intended to provide special services for eligible children, and districts frequently are given specific instructions to that effect. However, few of the state programs have stringent requirements of the type embodied in the Title I comparability or supplanting regulations.

Program Development Requirements.--All States make an effort to inform participating districts about the purpose of the compensatory education program and the ways in which the legislature intended funds to be used. Beyond this, however, there is considerable variation in the extent to which States impose limits on the types of programs districts can establish.

Four States--New York, New Jersey, Texas, and Georgia--strongly encourage districts to use their funds for reading programs. The rest generally permit other instructional services, such as bilingual instruction. Two-thirds of all States permit money to be used for auxiliary services such as transportation, food, medical care, and counseling, while the remainder permit expenditures on instructional services only.

Planning and evaluation requirements vary a great deal. Some States have planning, needs assessment, and evaluation requirements similar to those of Title I. In California, districts and schools are required to develop comprehensive plans, assess local needs, state goals, conduct evaluation, and guarantee community involvement. Similarly, New York's districts must make a detailed 3-year plan, and Ohio's districts must also plan programs based on specific goals determined by a needs assessment. In Michigan, performance in the statewide assessment is an important element of the state program.

By contrast, Oregon and Nebraska make no formal program development requirements. In Oregon, the SEA has no formal oversight authority, and in Nebraska funds can be used as a part of general revenues. Georgia requires no plan or program evaluation, although funds can be used only for instructional personnel. Other States fall between these extremes in their requirements. For the most part, these States are satisfied with the submission of a plan and program evaluation. Finally, a small number of States have parent involvement requirements modeled on Title I, but a comparable level of parental involvement is rare.

Services Provided

Services provided through the various state programs resemble those provided under Title I. Most often, funds are used to provide reading and mathematics instruction for children at the elementary level; they might also be used for bilingual programs and for such auxiliary services as food or medical care. If States discourage use of state funds for auxiliary services, districts can pay for auxiliary services with Title I and pay for instructional costs with state monies.

A number of States either limit the grades served by their compensatory education program or require that certain grades by given priority. As is the case with

Title I, funds are most often used for elementary pupils. However, in a number of cases, state funds are used to complement Title I and directed specifically to different grades. For example, Utah's program is concentrated almost exclusively on senior high school students.

Several examples illustrate the range of services provided through state compensatory programs. California's EDY program and Michigan's Chapter 3 program bring Title I children additional services similar to those provided under Title I. Compensatory programs in Texas, Georgia, New Jersey, and New York primarily provide reading instruction. In Rhode Island, more than two-thirds of the funds going to the State's largest district pay costs associated with desegregation.

In general, services delivered through state compensatory programs are similar to those funded under Title I. While the districts and States might fund programs to meet unique needs of bilingual education, or transportation for desegregation, for example, they have not attempted to deliver a different kind of program. However, some States do provide services to groups of students not typically served by Title I, or increase the level of services provided to Title I students. These States clearly help augment the services provided under Title I.

Administration

The most important single fact about the administration of state compensatory education programs is that few States invest much time, effort, or money in it. Just as the framework of regulations laid down for state programs is, in general, far less comprehensive and stringent than for Title I, so the degree of monitoring and technical assistance provided is far smaller. Some state programs provide such low levels of administrative funds that only a coordinator in the state office can be provided. Only three States provide substantial funds for on-site monitoring or technical assistance.

Despite the small investment of state funds, many States do attempt to administer their programs. This is usually accomplished with staff paid from the Title I set-aside. In some States where the Title I and state compensatory offices are consolidated, nearly all administrative costs are paid by Title I. In most States where the

Title I and state offices are separate, most technical assistance and monitoring of state programs take place in the course of routine Title I site visits. Most state programs rely heavily on Title I to subsidize their administration.

Washington and Wisconsin, the two States that conduct competitive grant programs, are faced with unusual management requirements. In one sense, the state agency takes an active role in shaping compensatory programs because it determines the districts that will receive grants. However, after state grants have been made, participating districts are responsible for monitoring their own use of funds. The SEA then conducts end-of-year evaluations of each district's projects.

California, New York, and Ohio have developed comprehensive monitoring procedures including both periodic reporting from the districts and site visits by state agency personnel.

The remaining States vary in the procedures used in monitoring and providing technical assistance. In Michigan, for example, the Chapter 3 program was designed originally to hold districts accountable for the results of their programs, only as measured by a statewide assessment. Although some elements of that basic model are still in effect, the State now is moving toward an application process and a system of site visits modeled after Title I.

Georgia, on the other hand, has no planning or evaluation requirements, but a detailed description of each district's program is submitted to the SEA at midyear. In Nebraska, districts are required only to submit an application. Portland, Oregon, reports directly to the state legislature.

In a number of cases, such general fiscal oversight is the limit of SEA activity, with the State doing little in the way of evaluation or technical assistance. Texas is presently developing an application procedure, but the structure of compensatory programs is still determined by the districts; the districts submit evaluations of their own programs based on pre- and post-testing while the State maintains liaison with the districts through site visits. In Utah, districts evaluate their own programs according to objectives the districts themselves have set.

The stance assumed by a state agency in relation to administration of its own compensatory program depends in part on the way the legislature has designed the program. In some States, the legislature is far more concerned with disbursing revenues to the districts than with guaranteeing that services are received by the target population.

However, even States with elaborate program requirements and administrative procedures typically have inadequate resources for intensive auditing or rigorous enforcement procedures. Therefore, they rely heavily on the services of Title I staff.

One consequence of the relatively low funding for administration is that monitoring of supplanting is almost nonexistent in state programs. Even in States that expressly require state funds to be used for supplemental services, districts carry the burden of insuring supplementation. Low staff levels for state administration have caused the States to concentrate instead on developing detailed accounts of the amounts spent on eligible children or for eligible programs.

STATE PROGRAMS AS MODELS FOR THE IMPROVEMENT OF TITLE I

A major objective of NIE's analysis of state programs was to determine if characteristics of these programs suggest possible changes or improvements in the conduct of Title I. There are three important areas in which this might be the case: the methods used for allocating funds, techniques for program administration, and the design of programs and services at the school level. Of these, the methods used for allocating funds to state compensatory programs offer the most plausible alternative models for Title I.

A number of States have devised novel ways of allocating compensatory education funds. Of these, Michigan's achievement-based funding system is probably the best known. The competitive grants program adopted by Washington and Wisconsin could also be used in allocating all or some Federal funds. Any of these approaches might be considered for a Federal program providing special services to educationally disadvantaged pupils. Another of NIE's reports will consider the costs and feasibility of using achievement criteria to allocate Title I funds. No firm information about the

problems of using a competitive grants system for a national compensatory education program is available.

State programs have developed little in the way of new approaches to program administration, monitoring, or enforcement. Most programs have eligibility and targeting requirements that echo those of Title I. The formal restraints on the way districts use funds, and their regulations for program development, generally are weaker than similar requirements attached to Title I and certainly are not novel. To the extent that States try to guarantee that state compensatory funds are used for supplementary services, rather than general aid or tax relief, they generally rely on procedures similar to Title I's system of requirements and monitoring, and they also depend heavily on the staff paid for from the Title I administrative set-aside.

Thus, state compensatory programs do not provide alternative and more effective ways of guaranteeing that Title I funds are used to supplement state and local money at the district, school, and pupil levels, and that beneficiaries receive a comparable level of services. Rather, they provide examples of compensatory education programs in which fewer restrictions are placed on the allocation and disposal of funds by district educators.

Finally, there is no evidence that the design of state and Title I services is markedly different. State funds are most often used to complement and augment Title I programs rather than to establish distinct approaches. No State told NIE of any instructional services delivered under its program that are not delivered somewhere under Title I. In general, therefore, it would appear that state compensatory education programs do not provide a pattern for fundamental changes in the Federal effort.

THE RELATIONSHIP BETWEEN STATE PROGRAMS AND TITLE I

In addition to examining their possible contribution to improving the design of Title I, NIE also analyzed the extent to which state programs are helped or hindered in their operations by the Federal program. State compensatory programs greatly strengthen the services available to eligible pupils; it is important that Title I contribute as much as possible to the development and effective operation of state programs. NIE research and conferences, therefore, focused on:

- The existence of tensions between the Title I requirements and those of state programs

- The degree to which Title I complements and strengthens state programs

- The future of state compensatory education programs

Tensions Between State Compensatory Education Programs and Title I

State coordinators identified a number of problems in the relationship between Title I and their own compensatory education programs. Nearly all of these problems arose from lack of clarity in interpretations and guidelines issued under Title I, and from inconsistencies in Federal monitoring and enforcement. The special exemption from comparability requirements granted in the 1974 Education Amendments apparently removed the one specific barrier the Title I legal framework presented to the implementation of SCE programs.[3]

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[3]Before the enactment of the 1974 Amendments to Title I, LEAs providing state-funded compensatory services usually had to provide them in all Title I schools before they could be provided in non-Title I schools, because providing substantial amounts of state-funded services in non-Title I schools would raise the average level of expenditures in those schools. Under comparability requirements, each Title I school is compared individually with the average of non-Title I schools. If a single Title I school did not receive state compensatory services, it would not meet that new level of expenditures and thus would be out of compliance with the comparability requirement.

As a result of revisions in the legal framework resulting from the Education Amendments of 1974, an LEA is now permitted to exclude from its comparability computations expenditures for "comparable state or local programs for educationally deprived children." To qualify for an exemption from comparability, SCE programs must meet four criteria:

(1) The funds must be used for educationally deprived children.
(2) The funds must be used for a program that is evaluated.
(3) The funds must be used for special, supplementary purposes.
(4) The LEA must be accountable to the SEA for compliance with the first three requirements.

According to state coordinators, Title I does not interfere with the state compensatory education programs except where Title I itself is difficult to implement. The problems with the clarity of Federal interpretation and management of Title I identified in Chapters II and III of this report cover all the concerns expressed by state coordinators. Thus, Title I causes problems with state programs only insofar as its legal framework is not administered clearly by the Federal Government.

Despite the relative scarcity of complaints from the coordinators about the relationship between the Title I legal framework and state compensatory programs, two specific issues about possible changes in the Title I framework have been identified.

The first concerns the distribution of state compensatory funds in areas ineligible for Title I. The Title I legal framework does not require LEAs to favor low-income areas with respect to the distribution of SCE funds. Under Title I, educationally disadvantaged children residing in low-income areas must receive only their fair share of SCE funds. Some state and local coordinators maintained that this policy should be changed to permit LEAs to use SCE funds solely in areas that are not eligible for assistance under Title I. Although such a change is possible, modifying Title I to permit it would mean that educationally disadvantaged children residing in poor areas and not receiving any assistance under Title I would be penalized in the distribution of SCE funds.

The second issue concerns California's Early Childhood Education (ECE) program. This program is designed to restructure the school environment in grades K-3, by providing services to all children in these grades. Because ECE provides funding for the whole school and does not target funds specifically on educationally disadvantaged children, it does not qualify as a state compensatory program under the Title I legal framework and cannot be exempted from comparability. In the distribution of ECE funds, therefore, California districts face the same problems that districts in other States faced before the 1974 Amendments regarding the comparability exemption. California has proposed a general waiver of the comparability requirements for ECE. OE has not responded because it lacks statutory authority to issue such a waiver.

Importance of Title I to State Programs

The coordinators of state compensatory programs agreed that Title I was necessary for the success of their own efforts. Title I established the principle of special assistance to disadvantaged children and created a model that others followed. Without it, they argued, few States would have initiated, or would continue, funding for this special population. In addition, they expressed the opinion that loosening Title I requirements would undermine rather than strengthen SCE efforts.

Most coordinators noted the strong fiscal pressures on both state and local education agencies. School districts in every State face critical shortages of local revenues needed to sustain general educational services. Under these circumstances, coordinators rely on Title I's funds requirements as a model for SCE programs and as a source of legal support. Without them, the coordinators doubted whether state agencies would be able to resist the pressures to use state money to alleviate general fiscal crises. In addition, as noted above, they rely on Title I for administrative funds.

As one local coordinator stated:

> We cannot finance remedial programs locally: we have to do it through state and Federal dollars. That is why we have to ensure that the (Federal) categorical grant process does not ultimately become block grant because (the funds would be distributed without regard to need for compensatory education). The Title I program in the State of . . . works, the whole concept, and consequently, we feel that state compensatory education will work. . . If you want to see that continued in the State of . . . , then do not change Title I from categorical to block grant. Do not take away powers of the State Department.

Clearly, compensatory education administrators are interested in maintaining the identities of their own programs and feel that is the best way to guarantee special services to the client groups. Officials with more general concerns, such as chief state school officers and local superintendents, might argue that funds are needed elsewhere to keep schools open and meet rising educational costs, and that comprehensive regulations for the use of funds deny them the flexibility they need in planning educational programs as a whole. However, it does seem probable that if Title I requirements were loosened, fewer resources would be used to provide special and

supplementary services for disadvantaged pupils. Title I and state compensatory programs can keep their specifically compensatory character only if a system of requirements like that of Title I is maintained.

The Future of State Programs

Most state coordinators reported that their States' programs were regarded as successful and had strong support in the legislatures. Some expected their programs to continue growing incrementally. With only a few exceptions, however, state officials do not expect their programs to increase enough to rival in size their State's Title I allocation.

General fiscal crises in education appear to rule out major growth in compensatory education in any but the most prosperous States. In addition, new state priorities, including those resulting from powerful Federal incentives for expenditures on handicapped children, also limit the potential growth of state compensatory programs.

CONCLUSION

State compensatory education programs have been established in almost a third of the States and provide a significant level of funding for compensatory services.

In general, they follow the pattern of Title I, although some interesting alternative funding patterns have been developed. They target funds to the same types of pupils, and provide the same types of services. Moreover, to the degree that States try to guarantee that funds are used for supplementary services rather than general aid or tax relief, they rely on a system, similar to Title I's, of monitoring and sanctions and depend on staff funded from the Title I administrative set-aside to implement their system. Thus, state programs do not offer a better way of guaranteeing the supplementary services mandated by the Title I statute. While some of their technical features might be desirable in the Federal program, they do not offer a model that suggests fundamental changes in Title I.

Because the 1974 Education Amendments permitted the waiver of comparability requirements, most States do not perceive serious tensions between state and Federal requirements. State coordinators, instead, find Title I useful as a model and a source of help in protecting state compensatory funds from use as general aid.

In general, state programs provide services which complement and augment Title I programs. However, their continued growth is not assured. Compensatory programs must compete with other claims for state and local funds. States that have established their own compensatory programs generally can call on greater financial resources than those that have not. In a time of general fiscal crisis in education it is unlikely that many more States will initiate major SCE programs.

APPENDIX A. SECTIONS 821 AND 150
OF PUBLIC LAW 93-380

Public Law 93-380
93rd Congress, H. R. 69
August 21, 1974

An Act

To extend and amend the Elementary and Secondary Education Act of 1965, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Education Amendments of 1974".

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Part B—Educational Studies and Surveys

STUDY OF PURPOSES AND EFFECTIVENESS OF COMPENSATORY EDUCATION PROGRAMS

Sec. 821. (a) In addition to the other authorities, responsibilities and duties conferred upon the National Institute of Education (hereinafter referred to as the "Institute") by section 405 of the General Education Provisions Act and notwithstanding the second sentence of subsection (b)(1) of such section 405, the Institute shall undertake a thorough evaluation and study of compensatory education programs, including such programs conducted by States and such programs conducted under title I of the Elementary and Secondary Education Act of 1965. Such study shall include—

(1) an examination of the fundamental purposes of such programs, and the effectiveness of such programs in attaining such purposes;

(2) an analysis of means to identify accurately the children who have the greatest need for such programs, in keeping with the fundamental purposes thereof;

(3) an analysis of the effectiveness of methods and procedures for meeting the educational needs of children, including the use of individualized written educational plans for children, and programs for training the teachers of children;

(4) an exploration of alternative methods, including the use of procedures to assess educational disadvantage, for distributing funds under such programs to States, to State educational agencies, and to local educational agencies in an equitable and efficient manner, which will accurately reflect current conditions and insure that such funds reach the areas of greatest current need and are effectively used for such areas;

(5) not more than 20 experimental programs, which shall be reasonably geographically representative, to be administered by the Institute, in cases where the Institute determines that such experimental programs are necessary to carry out the purposes of clauses (1) through (4), and the Commissioner of Education is authorized, notwithstanding any provision of title I of the Elementary and Secondary Education Act of 1965, at the request of the Institute, to approve the use of grants which educational agencies are eligible to receive under such title I (in cases where the agency eligible for such grant agrees to such use) in order to carry out such experimental programs; and

(6) findings and recommendations, including recommendations for changes in such title I or for new legislation, with respect to the matters studied under clauses (1) through (5).

(b) The National Advisory Council on the Education of Disadvantaged Children shall advise the Institute with respect to the design and execution of such study. The Commissioner of Education shall obtain and transmit to the Institute such information as it shall request with respect to programs carried on under title I of the Act.

(c) The Institute shall make an interim report to the President and to the Congress not later than December 31, 1976, and shall make a final report thereto no later than nine months after the date of submission of such interim report, on the result of its study conducted under this section. Any other provision of law, rule, or regulation to the contrary notwithstanding, such reports shall not be submitted to any review outside of the Institute before their transmittal to the Congress, but the President and the Commissioner of Education may make to the Congress such recommendations with respect to the contents of the reports as each may deem appropriate.

(d) Sums made available pursuant to section 151(i) of the Elementary and Secondary Education Act of 1965 shall be available to carry out the provisions of this section.

(e)(1) The Institute shall submit to the Congress, within one hundred and twenty days after the date of the enactment of this Act, a plan for its study to be conducted under this section. The Institute shall have such plan delivered to both Houses on the same day and to each House while it is in session. The Institute shall not commence such study until the first day after the close of the first period of thirty calendar days of continuous session of Congress after the date of the delivery of such plan to the Congress.

(2) For purposes of paragraph (1)—

(A) continuity of session is broken only by an adjournment of Congress sine die; and

(B) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the thirty-day period.

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"ALLOCATION OF FUNDS WITHIN THE SCHOOL DISTRICT OF A LOCAL EDUCATIONAL AGENCY

"SEC. 150. (a) For any fiscal year not more than 20 local educational agencies selected for the purpose of section 821(a)(5) of the Education Amendments of 1974 may elect, with the approval of the district-wide parent advisory council which is required to be established under section 141(a)(14) of this title, to allocate funds received from payments under this title on the basis of a method or combination of methods other than the method provided under section 141(a)(1)(A). Any method selected pursuant to this section shall be so designed and administered as to be free from racial or cultural discrimination.

"(b) Any local educational agency to which this section applies shall submit such reports to the Director of the National Institute of Education at such time and in such manner as the Director may reasonably require to carry out his responsibilities under section 821(a)(5) of the Education Amendments of 1974.

APPENDIX B. RECOMMENDATIONS OF THE LAWYER'S COMMITTEE FOR CIVIL RIGHTS UNDER LAW

The following recommendations for improving the clarity of the Federal legal framework for Title I have been made by the Lawyers' Committee for Civil Rights Under Law, on the basis of the Survey of Legal Standards:

(1) OE should include, under each substantive requirement set forth in regulations published in the Federal Register, illustrative examples of its application to commonly occurring situations. This technique is commonly used by other agencies for clarifying complex requirements.[1]

(2) A separate section entitled "interpretations" should be included in the regulations.[2] This section should be organized by subject area, rather than by requirement. Suggested headings include: teacher aides, support services, pullout programs, in-class programs, desegregation, individualized instruction, inservice training, programs in open-space schools, etc. The resolution of the problems arising in these areas

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[1] See, for example, regulations published by the Internal Revenue Service in Title 26 of The Code of Federal Regulations.

[2] In accordance with the Education Amendments of 1976, Section 431 of the General Education Provisions Act now requires, among other things, that all interpretations be published in the Federal Register. In addition, Section 431 of the GEPA Statute requires that OE treat interpretations in the same manner as it treats substantive regulations with respect to publication in the Federal Register of a notice of proposed rulemaking, comment period, republication, and submission to Congress. The Lawyers' Committee recommends that Section 431 of GEPA be amended to require that OE interpretations simply be published in the Federal Register. OE should not be required to first publish their interpretations in proposed form subject to comments, republication, and submission to Congress since interpretation, unlike substantive rules, do not have the "full force and effect of law." Recall that a substantive rule implements the statute, whereas interpretations simply advise the public of the agency's construction of the statutes and rules it administers. Moreover, application of burdensome procedures to interpretations discourages rather than encourages interpretation by OE when issues need clarification. The Lawyers' Committee recommendation that OE be required simply to publish its interpretations in the Federal Register and not follow the procedure applicable to other substantive rules is not exceptional in any sense of the word. OE interpretations would then be subject to the same procedures most other Federal agencies now follow under Sections 552 and 553 of the Administrative Procedures Act (5 U.S.C. 552, 553).

often involves interpretation of a number of regulations. This section should also include legal models illustrating the wide range of alternative program designs that are possible.

(3) Congress should require that OE prepare a policy manual for use by OE staff, HEW Audit Agency staff, SEAs, LEAs, and parents.[3] The manual[4] should include, at a minimum, quotations of relevant sections of the Title I and GEPA statutes; quotations of relevant regulations appearing in the Code of Federal Regulations; explanations of the purpose of each requirement, with reference to the legislative history, where relevant; summaries of OE responses to SEA requests for interpretations, including examples of actual applications of the standards and operative definitions set forth in the regulations; summaries of final decisions rendered by the HEW Audit Hearing Board; final determinations made by OE concerning audits closed without reaching the Hearing Board; and summaries of relevant court decrees.

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[3]For example, the Department of Housing and Urban Development has developed a manual explaining its Section 8 Housing Assistance program. Similarly, the Department of Labor developed a manual for administering the Welfare and Pension Plans Disclosure Act. (This Act has been replaced by the Pension Reform Act of 1974.)

[4]It is the Lawyers' Committee's opinion that a mandate for OE to prepare a manual would not be inconsistent with Section 431 of GEPA, relating to publication in the Federal Register so long as the following components of the proposed manual first appear in the Federal Register pursuant to the procedures of Section 431: (1) quotations of relevant regulations, (2) summaries of OE interpretations, and (3) examples of actual applications of the requirements in the regulations. The remaining components of the proposed manual, since they are not "rules, regulations, guidelines, interpretations, orders, or requirements of general applicability," need not be published in the Federal Register. Of course, Congress could also exempt specific components of a manual from the requirements of Section 431. NIE does, however, recommend that, consistent with the Freedom of Information Act, OE publish a notice in the Federal Register that such a manual exists (see 5 U.S.C. 552).

The manual should describe the kinds of records LEAs must maintain to leave a sufficient "audit trail" for the HEW Audit Agency. This section should be prepared jointly by OE and the Audit Agency.

A manual explaining the full range of permissible program design options would help to eliminate the constraints on local discretion which result from uncertainty about Title I requirements.

To ensure the wide distribution of the manual, OE should disseminate it in the same way it does regulations: send mass mailings to all States and local Title I districts, convene national and regional training workshops, and participate in state and local training sessions.

Substantially increased clarity in the Federal legal framework and more systematic dissemination of needed information to States and local districts would result from enactment of these recommendations. Another effect would be greater LEA flexibility in designing sound and innovative Title I programs, as well as a more uniform administration of the basic Title I requirements.

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